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SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND
PROTECTION OF MINORITIES

Forty-second session

SUMMARY RECORD OF THE 31st MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 29 August 1990, at 10 a.m.

Chairman: Mr. TÜRK

later: Mr. TREAT

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The meeting was called to order at 10.20 a.m.

STATEMENT BY THE CHAIRMAN

1. The CHAIRMAN told the members of the Sub-Commission that, through its representative in Geneva, the Government of Canada had notified him that at a press conference held on 28 August, the commander of the Canadian Armed Forces in Oka had confirmed that he had received orders to dismantle the barricades put up by the Mohawk Indians, without, however, using force. At a press conference, the Canadian Prime Minister, Mr. Mulroney, had also reaffirmed the Government's intention of continuing to seek ways of responding to the legitimate concerns of the Oka Mohawks and of solving the issue of their land claims as soon as the barricades had been removed and the situation had returned to normal. The Government of Canada had also emphasized that it understood the legitimate claims of the Indians and that it would continue to seek a fair and lasting solution to their problems. Lastly, it had reasserted that it would keep the Chairman of the Sub-Commission, the Chairman of the Working Group on Indigenous Populations and the Secretary-General informed of all its efforts to settle the problem peacefully, with regard for the human rights of all concerned. The text of the statements made by Mr. Mulroney at the press conference would be issued later.

2. Mr. ALFONSO MARTINEZ thanked the Government of Canada for the information, which was all the more valuable as there were indications that an armed confrontation was likely in the Mohawk reservations on the outskirts of Montreal. He had received information that the situation was serious and that for several days the Kahnawake reservation had been without supplies and had been under constant aerial surveillance. It was thus essential for the Sub-Commission to keep track of developments in the situation during the day and to appeal for wisdom and for the continuation of negotiations to find a peaceful solution to the conflict and to avoid any use of force.

3. The CHAIRMAN pointed out that it was in response to just such an appeal from the Sub-Commission to the Government of Canada that the latter had reasserted its intention of settling the problem by peaceful means and through negotiation.

THE NEW INTERNATIONAL ECONOMIC ORDER AND THE PROMOTION OF HUMAN RIGHTS (agenda item 7) (continued)

(a) THE ROLE AND PARTICIPATION OF WOMEN IN DEVELOPMENT (continued) (E/CN.4/Sub.2/1990/NGO/11)

THE REALIZATION OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS (agenda item 8) (continued) (E/CN.4/Sub.2/1990/19; E/CN.4/Sub.2/1990/NGO/8 and 16; E/CN.4/1990/8; E/CN.4/Sub.2/1989/19)

4. Mr. SUESCUN congratulated Mr. Türk on his progress report (E/CN.4/Sub.2/1990/19) that dealt with a challenge mankind had faced for centuries and to which a positive response had become necessary. It was precisely on the tangible aspects of the realization of economic, social and cultural rights that Mr. Türk had focused his attention, basing his report mainly on social and economic indicators. He considered Mr. Türk's approach a very good one. There was a real need to move beyond legal standards and systems and to focus attention on social reality, and Mr. Türk had rightly

placed greater stress on that reality than on the relevant standards. He raised real issues such as that of land rights, which were vitally important, in particular in countries with a long agricultural tradition, and which were differently perceived from one geographical region to the next. He had also devoted considerable attention to the right to housing, in connection with which Mr. Suescún cited the statements made by the non-governmental organization Habitat, which was studying the problem of the actual access of populations to that fundamental right in a positive and constructive manner.

5. Furthermore, a whole chapter of the report was devoted to the question of extreme poverty which was one of the main hurdles to the realization of human rights. In all countries there were people who lived on the fringe of society, and whose circumstances prevented them from effectively exercising their duly recognized rights. It was thus appropriate to consider the issue as a matter of priority. He suggested that Mr. Türk should attempt to identify the factors or means of promoting the realization of economic, social and cultural rights. The numerous hurdles had been mentioned by several speakers. They included, in particular, the activities of transnational corporations, the external debt burden and the structure of international economic and social power. All those factors lay at the root of the current international economic imbalance, as the world was still subject to the dictatorship of a market dominated by the strongest in which the weakest countries continued to suffer economic and social injustice. There was no doubt as to the need to question the economic, social and cultural order imposed by the developed world, which had given rise to what could only be described as economic and social scourges, such as the external debt and the arms race. The raison d'être of the United Nations and of the Universal Declaration of Human Rights was the establishment of a universal society, and only the introduction of a new international economic order based on justice and co-existence would make it possible to achieve that goal.

6. Mr. ALFONSO MARTINEZ regretted that the Sub-Commission had so little time to devote to matters as vital as those covered by agenda items 7 and 8 and said that it was essential for it to consider means of improving its working methods.

7. The economic and social problems facing most of the world's populations deserved the sustained attention of a body such as the Sub-Commission, as the tensions which they generated were extremely dangerous and there was reason to fear that they could spark off an uncontrolled outburst of violence. Overall trade and industrial indicators together with standard of living indices indeed showed that during the past decade only three countries in South-East Asia had recorded GDP growth. However, the problem was not restricted to third world countries, as poverty also festered on the outskirts of large cities in the industrialized countries. In that connection he drew attention to document E/CN.4/Sub.2/1990/NGO/11 issued by the International League for the Rights and the Liberation of Peoples, which reproduced the text of an appeal by leading international figures for the establishment of an equitable and sustainable international economic order. In view of the interdependence of human rights, the deterioration in the living conditions of many of the world's populations, which set back hope for the effective realization of economic, social and cultural rights, was likely to lead not only to serious social and economic problems, but also to grave political ones. Thus, in Latin America, a number of Governments overwhelmed by the debt burden were no

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longer able to cope with the social tension caused by economic difficulties. There was no doubt that in the future the Sub-Commission would have to deal with those issues as a matter of unprecedented priority.

8. The progress report prepared by Mr. Türk (E/CN.4/Sub.2/1990/19) reflected the scientific way in which he intended to discharge the task entrusted to him. However, it was unfortunate that he had not taken sufficiently into account a number of studies which he had been expected to use as a source for his work in accordance with resolution 1987/29 A, and it was to be hoped that he would do so in his subsequent report. Paragraph 2 (f) of that resolution also concerned the extremely important issue of the impact on human rights of the policies and practices of international financial institutions, notably the International Monetary Fund and the World Bank. Accordingly, he looked forward to Mr. Türk's second report, in which he was to deal with that question, as indicated in paragraph 218 of his progress report.

9. Moreover, Mr. Türk had not studied the problems, policies and progressive measures relating to the more effective realization of economic, social and cultural rights, with which he should have dealt pursuant to paragraph 1 of Sub-Commission resolution 1988/33. He thought that Mr. Türk perhaps over-emphasized in the progress report, indicators and the question of standard-setting, which he himself did not consider to be essential. In his subsequent report, Mr. Türk should analyse in greater depth the problems of indebtedness and of international trade and their relationship with the overall international economic and financial problems that hindered the realization of economic, social and cultural rights in third world countries and in the least developed countries.

10. Mrs. DAES thought that the progress report prepared by Mr. Türk (E/CN.4/Sub.2/1990/19) reflected the fundamental importance of a study on the realization of economic, social and cultural rights and of standard-setting in that sphere. Mr. Türk had devoted several paragraphs to the perennial and highly complex issue of land rights and in paragraph 122 of his report he had raised the question of whether the Sub-Commission could play a useful role in assisting with the transformation of those many principles into "hard law". She was convinced that it could, and hoped that the subsequent report would contain appropriate recommendations which, once approved by the Sub-Commission and the Commission, could serve as guidelines for legislative organs and Governments in enacting relevant laws.

11. Furthermore, she suggested that in his second report Mr. Türk should examine the question of the right to a clean environment and to protection against products harmful to health and the environment. Lastly, the use of indicators, in particular economic and social indicators, for the purposes of comparison should make it possible to draw conclusions of use to the international community and to Governments. Generally speaking she endorsed all the recommendations made by Mr. Türk in his report.

12. She said that she had also been impressed by the quality of the preliminary report by Mr. van Boven on the right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms (E/CN.4/Sub.2/1990/10). However, she suggested that in the conclusion and recommendations of his final report, he should take into account certain decisions of the Committee on the Elimination of Racial

Discrimination and of the Human Rights Committee, as well as the relevant decisions of the European Court of Human Rights and of the Inter-American Court of Human Rights.

13. With regard to the issue of a period of limitation for certain crimes, she recalled that in spite of the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity adopted by the United Nations General Assembly, certain Governments, particularly in Europe, considered that after a certain number of years, even crimes against humanity should be subject to statutory limitations. Such, however, was not the case of the USSR which had always been a fervent supporter of the principle of the non-applicability of statutory limitations to such crimes. She urged Mr. van Boven to pursue the matter further and if possible to carry out a cross-analysis.

14. She warmly congratulated Mr. Varela Quirós on his preliminary report on discrimination against HIV-infected people or people with AIDS (E/CN.4/Sub.2/1990/9) and unreservedly endorsed his final observations. She urged the Secretary-General to provide Mr. Varela Quirós with the necessary assistance to enable him to complete his study of one of the most pressing problems faced by contemporary society.

15. The CHAIRMAN said that the Sub-Commission had completed its consideration of agenda items 7 and 8.

REVIEW OF FURTHER DEVELOPMENTS IN FIELDS WITH WHICH THE SUB-COMMISSION HAS BEEN CONCERNED (agenda item 4) (continued) (E/CN.4/Sub.2/1990/4, 5, 6, 9, 10, 11 and 17; E/CN.4/Sub.2/1990/NGO/3 and 23)

16. Mr. Treat took the Chair.

17. Mrs. PALLEY said, with regard to the report submitted by Mr. Varela Quirós (E/CN.4/Sub.2/1990/9), that people with AIDS or HIV-infected people should at all costs be spared the ostracism that had formerly affected lepers. Rather than allowing fear to gain the upper hand, appropriate measures should be adopted to ensure that everyone had access to health care. That effort should apply not only to people with AIDS, but to all sick or handicapped people, in view of the possibility that in a few years a new pandemic might spark off the same reactions.

18. As WHO had emphasized, a compromise should be found between the freedom of HIV-infected people and people with AIDS and the threat they posed to other people's health. She was wary of measures designed to circumscribe the risk, as they could prove counter-productive by encouraging infected persons either to conceal their illness or to avoid testing.

19. In her view, even if HIV-infected people posed a serious threat to the rest of society, attempts to isolate them in ghettos were misguided. She cited the example of Cuba, where, according to the most recent estimates, the percentage of HIV-infected soldiers returning from sub-Saharan Africa was 47 per cent. Rather than isolating them, it was preferable to instil in them a sense of responsible behaviour by means of education. In India, HIV-infected prostitutes were also detained. Since the incubation period for the disease might be more than 10 years, she asked how it was possible

thus to deprive people of their freedom, even if their place of detention was adequately equipped, as in Cuba. However, it should be noted that in Cuba at least, the persons detained received compensation.

20. With regard to the situation in her own country, the United Kingdom, she drew attention to the discrimination practised by insurance companies. In the United Kingdom, life insurance not only took into account the interests of survivors, but was also a prerequisite for buying, for example, a home. Nonetheless, some companies refused to insure persons whose morals they considered dangerous, such as homosexuals, even if the latter had undergone tests that had shown they were not HIV-infected. The very fact that certain groups of people had voluntarily undergone screening was occasionally advanced by the same companies to justify the claim that such persons were potentially dangerous. However, the Government had done nothing to remedy the situation, which was the responsibility of the private sector. Accordingly, she suggested appealing to States to adopt, at the national level, appropriate measures to encourage testing in order to demystify it and to put an end to discrimination against persons who underwent testing. Furthermore, it would be desirable for the authorities to persuade insurance companies to agree to insure persons threatened by AIDS, albeit at the cost of a higher premium.

21. States should also review their position on the distribution of condoms in prisons. The United Kingdom Government, for example, refused to issue them on the grounds that sexual relations only took place in private. However, there was no doubt that sexual activities occurred in prison and the authorities in the various countries should be urged to ensure the free distribution of condoms in penal establishments and to see to it that detainees were suitably educated.

22. Access to care, particularly in the developing countries, was, moreover, closely linked to the right to health. She referred to a letter from the Secretary-General of the Pan-African Organization Against AIDS (OPALS) and drew attention to the unacceptable gap, in the sphere of health, between countries in the South and those in the North. In Africa, sick persons had no access to expensive treatment and were also deprived of most essential medicines. Thus, Africa was experiencing a renewed outbreak of tuberculosis, probably due to the diminished immunity of people with AIDS, and thousands of Africans died for want of care or continued to suffer from diarrhoea or pneumonia. Accordingly, she suggested making an appeal for the right to health to override the right to intellectual property.

23. Mr. ALFONSO MARTINEZ, speaking on a point of order, recalled that all members had hitherto endeavoured to avoid exceeding the time allocated to them and to complete their contribution within one minute of a reminder from the Chair. He noted that Mrs. Palley had already exceeded by over two minutes the time allowed to complete her statement.

24. Mrs. PALLEY concluded by recommending that, in agreement with WIPO, a proposal should be made to pharmaceutical companies concerning legal and financial arrangements to allow essential medicines to be distributed in all countries of the world at reduced cost.

25. Mr. SUESCUN said that the report submitted by Mr. van Boven on the right to restitution, compensation and rehabilitation of victims of gross violations of human rights and fundamental freedoms (E/CN.4/Sub.2/1990/10) stressed State

responsibility, which had been one of the most significant developments of the century. That concept had gradually developed from the moment it had been recognized that, although they were sovereign, States were none the less accountable for their acts. National and international tribunals as well as many jurists had subsequently endeavoured to define the notion, which should achieve broad acceptance in the 1990s.

26. One only needed to look at developments in the countries of Eastern Europe, where authoritarian and centralized governments had nevertheless adopted new provisions that specifically recognized the right to compensation of victims of human rights violations. Such was the case in Hungary, where people who had taken part in the 1956 Budapest uprising had been compensated for the harm they had suffered. By its changed attitude, the Hungarian State recognized that it was not infallible and that if one of its agents committed a misdemeanour, it must take responsibility for it and compensate the injured party.

27. Moreover, the American Convention on Human Rights, the African Charter on Human and Peoples' Rights and a number of decisions of the European Court of Human Rights specifically established the duty of the State to make amends to persons whose fundamental freedom or rights had been infringed. Those international instruments derived from the universal obligation to redress any harm suffered. If, as Mr. van Boven observed, the victim of such violations was indeed to have the right to take his case to court and to obtain an equitable judgement, the question of whether a national or international court should handle the affair, still remained. Mr. Suescún considered that in such cases, national and international bodies should work together, since, far from being mutually exclusive, their jurisdictions were complementary.

28. As an illustration of the importance he attached to any measure adopted at the national level, he cited the case of his own country, Colombia, which, despite its many ordeals, had taken significant and radical decisions to establish the responsibility of the State for any abuse committed under its authority, as was illustrated by a decision relating to the disappearance of persons arrested by the armed forces.

29. Accordingly, he suggested that the Sub-Commission should continue to consider the question by attempting to indicate in which direction national legislation should develop. He noted that one of the earliest measures adopted by countries in Eastern Europe had been to define the guarantees available to an injured party. Thus, in particular, an administrative tribunal had been established in Hungary as an essential guarantee of the right of remedy.

30. Mrs. WARZAZI emphasized, in connection with the report submitted by Mr. Varela Quirós (E/CN.4/Sub.2/1990/9) on discrimination against HIV-infected people or people with AIDS, that the panic caused by that affliction accounted for the reactions to which it gave rise. In her view it was essential for the authorities to concentrate on combating fear through education and information.

31. While in the industrialized countries AIDS was most often attributable to homosexuality or drug addiction, and its victims were mainly men, in the developing countries the disease was as common among women as among men. The disease was also spread by transplacental transmission between children and

their mothers. The rise in the number of cases of AIDS also had a negative impact on the rate of population growth as well as affecting economic relations, since the death of an adult in a family involved the loss of a wage. It also accounted for divorces, separations and desertions of the home, and affected the most vulnerable members of society, women and children. She recalled that women in the developing countries urgently needed advice and primary health care.

32. Accordingly, the Sub-Commission should suggest to the relevant United Nations bodies that they put out an appeal to prevent AIDS from becoming a further source of profit for transnational corporations. The current competition that was rife was seriously jeopardizing the distribution of the medicines essential to combat an affliction that was threatening mankind.

33. Mr. DESPOUY said that it was unfortunate that time constraints made it impossible to discuss each of the reports before the Sub-Commission under the current agenda item. He thanked Mr. Varela Quirós for his valuable report on discrimination against HIV-infected people or people with AIDS (E/CN.4/Sub.2/1990/9), and said, in connection with the preliminary report by Mr. van Boven on compensation for victims of gross violations of human rights (E/CN.4/Sub.2/1990/10) that the term "redress" was preferable to "compensation", it was necessary to distinguish clearly between the notion of compensation in civil law, and the new concept of redress for human rights violations. Furthermore, human rights violations took various forms, and in the case of arbitrary detention, redress first and foremost meant the detainee's release. Naturally, the victim should then be compensated for the injury caused by his detention, and it was in this respect that difficulties arose.

34. He had first-hand knowledge of the question, as he was a citizen of a country in which many human rights violations had taken place and where the problem of redress had arisen, without a satisfactory solution being found. For that reason he urged the Special Rapporteur to examine specific cases in order to show how the problem had been dealt with and to identify any shortcomings in the solutions adopted. For example, in Argentina, the people who had been arbitrarily detained under the military régime had all claimed compensation, but the Supreme Court of Argentina, which had been lawfully set up in a democracy, had nevertheless taken the view that the suits concerned matters covered by a period of limitation. In contrast, the Inter-American Commission on Human Rights, which had also dealt with such cases, had come out against that restrictive interpretation, which had been adopted by most Latin American case law.

35. As far as disappearances were concerned, the legal systems, as a rule, were unprepared for dealing with such a heinous form of repression. It was thus necessary to review them and to ask, in particular, whether the amnesty laws were acceptable in cases involving disappearances, to consider the question of immunity from prosecution, whether amnesty should entail loss of the right to compensation and whether the right to know the truth should be observed. Those were fundamental and complex issues to which the countries of Latin America, for their part, had not found truly satisfactory answers.

36. The Special Rapporteur might perhaps examine the manner in which the human rights treaty bodies had dealt with such issues. The Human Rights

Committee had also taken a restrictive view by declaring that it was not competent to deal with events that had taken place prior to accession to the International Covenant on Civil and Political Rights. The Committee against Torture had, however, adopted a more flexible stance by declaring that although its competence did not extend to violations committed before accession to the Convention against Torture, it considered that States had a moral obligation to compensate victims.

37. Mr. EIDE regretted that he was unable to discuss all the reports submitted under the current agenda item. He hoped that Mrs. Warzazi would be able to complete her valuable study of traditional practices affecting the health of women and children and said that he was extremely impressed by the excellent preliminary study by Mr. Joinet and Mr. Türk on the right to freedom of opinion and expression (E/CN.4/Sub.2/1990/11).

38. With regard to the preliminary report by Mr. van Boven on the right to compensation for victims of gross violations of human rights and fundamental freedoms (E/CN.4/Sub.2/1990/10), he paid a tribute to the outstanding analysis made by the Special Rapporteur. He endorsed the observations of Mr. Suescún and Mr. Despouy as to whether the right to compensation could be exercised in practice and endorsed Mr. Despouy's suggestion that Mr. van Boven should study the experience of the countries of Latin America, where many political and other difficulties hampered the exercise of that right.

39. In his view, the first thing to be done would be to institute domestic remedies that would make it possible to obtain effective redress as soon as a violation had been committed. That would be no easy matter, even in democratic systems, when it was necessary to confront subversive groups, as in Colombia where judges were constantly under threat. He wondered whether the international community might not intervene when the national authorities failed to act, by suspending international economic or other co-operation as a form of sanction against them. He also expressed the hope that Mr. van Boven would consider means by which the international community could act when there were no domestic remedies because of a Government's refusal to institute them, or when it was impossible to make use of such remedies because of the establishment of a military régime, or for any other reason.

40. With regard to the preliminary report by Mr. Varela Quirós on discrimination against HIV-infected people or people with AIDS, (E/CN.4/Sub.2/1990/9), he shared Mrs. Warzazi's view that it was a valuable report. The Special Rapporteur had asked for suggestions on how to carry out the study, and Mrs. Palley and Mrs. Warzazi had made extremely valuable contributions, which he endorsed. In general, it would be necessary to find a means of solving the paradox between, on the one hand, the need to protect the health of the population, and on the other, the duty to prevent a form of discrimination that was often counter-productive. He suggested that the Special Rapporteur should, in particular, study, with the assistance of WHO, actual examples of constructive interaction between health authorities and groups at risk.

41. Mr. CHERNICHENKO said that in the future the Sub-Commission should take into account the extremely short amount of time allocated to it to examine all the items on the agenda and organize its work accordingly. Consideration and discussion of the reports and studies submitted to it were the Sub-Commission's principal task and were extremely important. Accordingly,

the Sub-Commission should discuss in depth each of the reports examined, and he regretted that documents were not distributed in time in all the working languages.

42. He stressed the fact that, as an international body, the Sub-Commission should primarily consider the existing international standards and only subsequently analyse national legislation and practice in order to identify general trends as a means of completing current international standards. Moreover, no national practice could really serve as a model in the international sphere.

43. With regard to another problem about which he was particularly concerned, he considered that the Sub-Commission's future programme of work was not sufficiently precise, and suggested following the example of the Commission on Human Rights which drew up a detailed programme of work. While some problems linked to human rights could arise unexpectedly and require urgent attention, others were more immutable. In particular, criteria for assessing human rights violations needed to be worked out. Efforts were being made to do so at the national level and it would be valuable to receive information on them. He wondered whether, for that purpose and for the purpose of other research, the Sub-Commission might not consider developing closer links with national intellectual, scientific and legal circles, as it would be unable to do everything on its own. Special rapporteurs occasionally established such contacts which could perhaps be strengthened and expanded. Needless to say, any co-operation of that kind should be regarded as a voluntary contribution by the circles concerned and should not entail financial implications for the United Nations.

44. Mrs. BAUTISTA first expressed the hope that at its next session the Sub-Commission would manage to organize its work better. She then emphasized that the international community, together with all human rights bodies and the Sub-Commission should once again call on States not to use chemical weapons, in blatant violation of the Geneva Convention relative to the Protection of Civilian Persons in Time of War and of human rights instruments.

45. With regard to technology transfer and scientific development, which were supposed to bring prosperity to the third world, it had now become clear that their excessive cost had reduced many countries to a state of mendicity and their populations to a state of marginalization and poverty beyond the point of no return, unless the financial institutions of the richer nations humanized their banking practices, rescheduled debt repayment realistically and granted the poor in those countries a breathing spell to enable them to exercise their fundamental rights to life and dignity. Otherwise, the destitute populations would rise in mass protest against the established authorities, and unleash an infernal cycle of repression and violence.

46. Moreover, in the interests of development and industrialization, groups had been systematically deprived of their ancestral land and treated in an unjust and inhuman manner. Indigenous people had been sacrificed in their thousands for a development from which they were excluded. She thought that development should improve the quality of life of all people and not undermine the fundamental rights of some. It was high time that the transfer of science and technology to the developing countries took that requirement into account.

47. Moreover, the industrialized countries' practice of dumping their dangerous waste in third world countries should be stopped. That discriminatory and inhuman practice should be condemned as a gross violation of the right to life and to a clean environment.

48. Mr. Türk resumed the Chair.

49. Mr. HATANO regretted that lack of time meant that he could deal with only one of the 12 sub-items under agenda item 4, i.e. the right to freedom of opinion and expression, which was the subject of the preliminary report by Mr. Joinet and Mr. Türk (E/CN.4/Sub.2/1990/11). With regard to that right, he emphasized that even in genuinely democratic countries, where the authorities did not infringe it, freedom of expression was not fully guaranteed and suffered violations by organizations, terrorists, private interest groups and by individuals. Thus, in Japan, where freedom of expression was in principle unrestricted, an extreme right-wing activist had shot and seriously wounded the Mayor of Nagasaki for stating that he felt ashamed, as a Japanese, by events in Japan in the 1930s and at the beginning of the 1940s and that the Emperor Hirohito had been partly responsible. The Yakuza constituted a criminal organization whose hold over Japan's major cities, particularly affected freedom of expression. Lastly, in Japan, there was a more widespread taboo on using in public words such as "blind", "deaf" or "lame", which were considered "discriminatory". It would be worth-while for the Special Rapporteurs to deal with those violations by non-governmental sources of the right to freedom of opinion and expression.

50. Mrs. KSENTINI said that she found it unfortunate that the Sub-Commission had so little time to study an item that was so important, since its main function was, in fact, to produce reports on which their authors spent a good deal of time and attention.

51. She congratulated Mrs. Warzazi on her oral report on the question of traditional practices affecting the health of women and children. The issue deserved to be followed up and the programme of work advocated by Mrs. Warzazi on the evolution of attitudes of mind was a valuable initiative.

52. She also congratulated Mr. Varela Quirós on his report on discrimination against HIV-infected people or people with AIDS (E/CN.4/Sub.2/1990/9). As the Special Rapporteur had emphasized, the fundamental problem lay in the danger of such persons being marginalized and burdened with guilt.

53. The preliminary report by Mr. van Boven on the right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms (E/CN.4/Sub.2/1990/10) deserved attention. The field in question was still ill-defined, as international standards were in a process of evolution and the concept of State responsibility in that respect, as well as the concepts of compensation, restitution and rehabilitation of victims were as yet vague. In paragraph 23 of his report, Mr. van Boven linked those rights to the principle of State responsibility. However, it was perhaps necessary also to consider the responsibility of individuals or of groups. Mr. van Boven might also consider the views of the Commission on Human Rights' Working Group to Draft a Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms. In order to determine the responsibilities involved, it was also worth taking

into consideration the views of the persons whose rights had been violated. Mr. van Boven stressed individual rights, but one should not overlook the damages and suffering caused to groups and communities, who were, moreover, mentioned in resolution 1989/13 pursuant to which Mr. van Boven had prepared his study.

54. With regard to the nature of the rights violated, not only violations of civil and political rights, but also violations of economic rights, such as the plundering of natural resources and damage to the environment, whether by States or individuals, should be taken into account.

55. In paragraph 32 of his report, Mr. van Boven took up vital issues such as the obligation to grant compensation under international law, which in her view was binding, not only upon Governments, but also on other sectors of society. Furthermore, the question of assessing violations and the appropriate redress raised the problem of its nature, which could be either moral or financial or could involve rehabilitation. That latter form of redress could be considered, for example, in the case of environmental damage.

56. A further question that arose was the obligation to prevent violations. In the case of environmental damage, for example, the mere obligation to repair the damage might undermine the obligation to prevent it, in so far as it allowed those who had the means to pay compensation not to bother with preventive measures. It was also necessary to determine whether the State or those directly responsible for violations were liable to pay compensation. As far as the possibility of a period of limitation was concerned, she considered that certain particularly serious human rights violations should not be subject to statutory limitations.

57. The tentative outline of the study, provided in an annex to the report, appeared to be satisfactory except that whenever reference was made to international standards, it would be better to specify whether the type of rights concerned were collective, individual, economic or other rights. Lastly, the study should also consider what new human rights standards might be elaborated.

58. Mr. JOINET thanked his colleagues for their remarks on the report he had prepared with Mr. Türk (E/CN.4/Sub.2/1990/11). He also found it unfortunate that the Sub-Commission did not have time to study all the documents submitted to it and urged it to ensure that it would be able to do so, in particular in the light of a note he had just prepared.

59. Mr. SACHAR, said, with reference to the principle of proportionality, dealt with in the preliminary report on the right to freedom of opinion and expression (E/CN.4/Sub.2/1990/11), that article 19 of the Constitution of India provided for a reasonable limitation to freedom of movement, and that the courts were responsible for deciding what was "reasonable". He also noted that paragraph 66 of the report mentioned that no special reference had been found to the rights of others or to "contempt of court". That issue had not been ignored in India, although it was a source of controversy since courts could apply it too frequently.

60. In respect of damage caused to the environment and ecological disasters caused by large companies, he thought that the latter should be presumed fully or partly responsible without there being any need to prove negligence on their part.

61. Mr. TREAT, supported by the CHAIRMAN, suggested that the non-governmental organizations should circulate their statements without reading them out, in order to save time.

62. Mr. LITTMAN (World Union for Progressive Judaism) expressed surprise that the report by Mr. Joinet and Mr. Türk on the right to freedom of opinion and expression (E/CN.4/Sub.2/1990/11) contained no reference to the Rushdie affair, and read a statement by Mr. Daniel Pipes, director of the Foreign Policy Research Institute in Philadelphia, in which the latter said that the Rushdie affair, more than any other, raised the issue of freedom of expression. It had already caused deaths, considerable trade losses and diplomatic problems, and its repercussions were still being felt. Mr. Rushdie had to remain in hiding and a film being shown in many countries attempted to stir up opinion against the Jewish people by portraying them as the masterminds behind the affair. Politicians, publishers, journalists and academics lived in fear, even in countries in which freedom of expression was a deeply rooted tradition. Ayatollah Khomeini had demonstrated that intimidation knew no frontiers; the precedent was an ominous one.

63. With the passage of time it was apparent that the divisions over the affair were political rather than religious. Some Muslims had condemned the death sentence against Mr. Rushdie, while some non-Muslims had apologized for it. In fact, the forces of freedom and tolerance had confronted those of tyranny and intolerance. The death sentence had also served as a reminder of just how seriously most Governments in the Middle East and elsewhere circumscribed human rights. However, repression not only exacted a terrible human toll, as communist régimes throughout the world had learnt, but they also led to backwardness. As long as people risked death or imprisonment for expressing their opinion, as long as dictators were not compelled to loosen the fetters, it would be impossible for more Muslim countries to move along the road to progress.

64. It should, however, be noted that the attempt at intimidation had paradoxically turned The Satanic Verses into a commercial success and stirred up antagonism that would harm Iran for many years. It remained to be seen whether the influence that Khomeini had managed to wield was an aberration or the beginning of a subtle shift in norms. Those who sought to establish universal standards for the protection of fundamental human rights should make it clear that those who defended such rights would not be intimidated by threats.

65. The Commission on Human Rights should help to spread that message. He called on the Sub-Commission to denounce, in a specific and clear resolution, the ugly edict of 14 February 1989 and all that it stood for.

66. Mrs. THOMPSON (International Commission of Jurists) expressed her organization's concern at the growing number of countries which had introduced travel restrictions on entry into their territory, out of fear of HIV infection. Some groups were especially affected, such as students and migrant workers, and occasionally tourists. Some countries required AIDS-free certificates, while others required testing for certain categories of individuals.

67. Restrictions on the entry into a country of aliens planning an extended or permanent stay was a limitation on freedom of movement that was particularly unjustified and discriminatory since short-term visitors were more likely to be exposed to HIV and to transmit it.

68. The World Health Organization had stressed that travel alone did not constitute a risk of acquiring and transmitting HIV, and required member States to ensure the maximum security against the international spread of diseases with a minimum interference with international traffic. Furthermore, the public health benefits of entry restrictions were too limited to justify such restrictions on human rights.

69. While infected persons placed a heavy burden on health and social services, the mandatory testing requirement was costly and diverted resources from education and prevention strategies. The Council of Europe had recommended to its member States not to refuse the right of asylum on the sole grounds that the asylum-seeker was contaminated by the HIV virus or suffered from AIDS. For its part, UNHCR had stressed that the economic cost of admission and care was to be seen as essential to overall international efforts, as had long been the case for physically and mentally disabled refugees.

70. The International Commission of Jurists emphasized that entry restrictions undermined the principle of freedom of movement, discriminated against those affected and had a serious impact on social, economic and cultural exchange. It welcomed the fact that the issue of freedom of movement had been addressed in the preliminary report prepared by Mr. Varela Quirós on discrimination against HIV-infected people or people with AIDS (E/CN.4/Sub.2/1990/9).

71. Mrs. FAHRI (International Council of Jewish Women), speaking on the right to freedom of opinion and expression, voiced her concern about the spread of "revisionist" ideas in France, which also attracted followers in other countries, and which consisted of denying that gas chambers were actually used or even existed. That thesis served not only to whitewash nazism, but also to attack Israel, Jews and Judaism. According to the revisionists, the Jews had lied in order to gain the compassion of the international community and to acquire a State. The revisionists were to be found at both ends of the spectrum, although mainly on the right, and although they were in no way democratic, ironically, they took advantage of their freedom of opinion to advocate exclusion and racism.

72. Revisionism was a form of racism and should be dealt with as such. In the face of such attempts at indoctrination, a democratic State should not only apply the law, but above all alert public opinion to the dangers of instruction in hatred, and introduce into its school curricula a thorough teaching of the values of democracy, the most important of which was knowledge of, and respect for others. She was pleased that the extremely complex issue of the definition of restrictions and limitations admissible in the case of the propagation of racist and revisionist ideas would doubtless be taken up as a matter of priority at the following session.

The meeting rose at 1 p.m.

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SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND
PROTECTION OF MINORITIES

Forty-second session

SUMMARY RECORD OF THE FIRST PART */ OF THE 32nd MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 29 August 1990, at 3 p.m.

Chairman: Mr. TÜRK
later Mr. HATANO

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Review of further developments in fields with which the Sub-Commission has been concerned (continued)

Promotion, protection and restoration of human rights at national, regional and international levels

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*/ The summary record of the second part of the meeting appears as document E/CN.4/Sub.2/1990/SR.32/Add.1

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GE.90-13591/2437B

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(a) Prevention of discrimination and protection of children: human rights and youth;

(b) Prevention of discrimination and protection of women

Human rights and disability

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Encouragement of universal acceptance of human rights instruments

The right of everyone to leave any country, including his own, and to return to his country

The meeting was called to order at 3.10 p.m.

REVIEW OF FURTHER DEVELOPMENTS IN FIELDS WITH WHICH THE SUB-COMMISSION HAS BEEN CONCERNED (agenda item 4) (continued) (E/CN.4/Sub.2/1990/4, 5, 6, 9, 10, 11 and 17; E/CN.4/Sub.2/1990/NGO/3 and 23)

1. Ms. SPALDING (International Commission of Health Professionals), speaking on behalf of ICHP and War Amputations of Canada, congratulated Mr. van Boven on his excellent preliminary report on the right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms (E/CN.4/Sub.2/1990/10). It had been widely felt that such a study could have a substantial impact on the development of more efficient enforcement mechanisms so as to provide remedial provisions for recognized individual human rights and would represent a significant contribution to the development of international law. ICHP hoped that the study would encourage the establishment of a standard of international conduct that would require States that had committed gross violations of human rights to compensate the victims. In May 1989, an international conference, jointly sponsored by the War Amputations of Canada and the Canadian Human Rights Foundation, had been held in Ottawa on the right to compensation for victims of gross violations of human rights. It was hoped that international conferences of that kind would be conducive to making the right to compensation part of the fabric of international human rights law.

2. The various Geneva Conventions adopted to protect the interests of prisoners of war and civilians represented a clear example of the current void found in international law. They consistently held that a State that violated the provisions of the Conventions should be liable to pay compensation; unfortunately, however, they did not provide for the necessary procedural mechanism or for the right of enforcement. Thus, any recourse by wronged persons under them had become ineffectual if the claim had not been exercised by the claimant's own Government against the Government of the perpetrators of the violations. It was of significance that the draft resolution on the right to compensation currently being studied by the Sub-Commission provided that in such a case the individual should have the right to initiate a claim for compensation.

3. With reference to the question of human rights in times of armed conflict, ICHP wished to draw the Sub-Commission's attention to the situation in north-eastern Sri Lanka, where the basic security and welfare of an entire population was at risk. The health services had broken down completely and one million persons were geographically trapped, being subjected to intensive bombardments. Children as young as 12 years of age were being recruited to fight. The cruelty of the situation and the violation of human rights were clearly demonstrable. All parties must be urged to refrain immediately from unnecessary violence.

4. Mr. GHEOGHE (International Federation of Human Rights), speaking on behalf of the IFHR and the Romani Union, said that the changes that had taken place in Eastern Europe over the past year had acutely highlighted several latent situations affecting the human rights of minorities, especially the Romany, or gypsy minority.

5. Nowadays, Romanies were a largely sedentary people integrated at different levels in their respective countries. Nevertheless, in all countries Romany communities were being discriminated against socially, economically and culturally. Sociological studies carried out in Yugoslavia, Hungary and Romania had shown that the Romany communities were the first and most serious victims of social segregation, unemployment, poverty, homelessness and lack of education and care and that they had a below-average life expectancy. The political changes in Eastern Europe, where Romanies formed a numerically important minority, had led to parallel and contradictory developments. On the one hand, Romanies had been able to found organizations, political parties and independent cultural associations and had been able to secure the election of representatives to parliament in Hungary, Czechoslovakia, Romania and Bulgaria. That had led to a greater awareness by Romanies of their civil and political rights and to a rapid improvement in the recognition accorded to them as a minority. On the other hand, as a reaction Romanies were being subjected to defamatory campaigns designed to make them the scapegoats for the economic or political problems, inter-ethnic clashes and moments of crisis inherent in the current changes. As a result of such campaigns, individual and collective acts of violence had been perpetrated against Romanies in Czechoslovakia and Romania, for example.

6. The situation had created a strong feeling of insecurity among Romanies, many of whom were leaving. IFHR and IUR drew the attention of the Sub-Commission to the potential dangers of such situations.

7. The Romany community in Eastern Europe expected the authorities to adopt a clearly defined attitude and to develop a coherent policy towards Romanies living in their territories, in co-operation with representatives of the Romany communities, as the Sub-Commission had requested on the basis of a proposal made by Mr. Capotorti. The two oganizations which he represented requested the Sub-Commission to ensure that States in Eastern Europe benefiting from United Nations advisory services or technical assistance programmes included in them projects specifically designed to combat and eliminate the special discrimination to which the Romany communities had been subjected for too long. They also requested the Special Rapporteur dealing with the question of minorities to give specific attention to the problems of the Romanies.

8. Mr. HADJAR (Liberation) drew attention to the serious violations of the civil rights of former, allegedly communist, political prisoners in Indonesia and of members of their families. In 1990, regulations had extended the scope of abuse to more people than ever. In April, Presidential decision 16/1990 on "special investigations for civil servants" had been issued. It instructed all government departments, the armed forces and government enterprises to screen all persons applying for jobs to ascertain whether they had ever been influenced by beliefs contrary to the official ideology or government policy. Persons already employed might also be investigated, especially when they were due for promotion. Departments were also instructed to investigate non-governmental organizations and professionals within their sphere of interest. As things stood, almost anyone who expressed criticism of the Government could be labelled a "communist" and lose his rights.

9. An Indonesian diplomat present had revealed the extent of the latest witch-hunt. The diplomat knew that he (Mr. Hadjar) had never been a member of the Communist Party and was not related to one. However, because he had campaigned for human rights and, being outside Indonesia, had often spoken out about human rights abuses in East Timor, he had been informed that if he continued to support the East Timorese cause, his passport would be withdrawn. He therefore called upon the Sub-Commission to urge the Indonesian Government to rehabilitate unconditionally all those who were suspected of being communists or of being under alleged communist influence, and to end the witch-hunt.

10. Ms. GRAF (International League for the Rights and Liberation of Peoples) said that in times of armed conflict or military occupation, respect for human rights was likely to rank very low. Failure to enforce humanitarian law only increased the sufferings of the non-combatant civilian population. It was therefore all the more crucial that it be entitled to a minimum degree of human rights protection and that it be permitted to benefit from the pertinent measures provided for by humanitarian law, whether or not the Government concerned had ratified the Geneva Convention and the additional protocols thereto. The two Additional Protocols of 1977 to the Geneva Conventions of 12 August 1949 had unquestionably been a step forward. Protocol I, concerning international armed conflicts, defined them as "situations including armed conflicts in which peoples are fighting against colonial domination and alien occupation and against racist régimes in the exercise of their right to self-determination". On many occasions, to exercise or to attempt to exercise, the right to self-determination was reason enough for a people to be subjected to many unlawful and criminal practices.

11. That situation was affecting the Eritrean people. The peace talks between the Ethiopian Government and the EPLF had unfortunately closed much too soon, but it was to be hoped that negotiations would be resumed promptly under the supervision of the United Nations, provided the Ethiopian Government's acceptance of the presence of United Nations observers was not just one more promise aimed at buying time for a military offensive. It was clear that both sides should be heard in order to know why the peace talks had been interrupted and to avoid, in future, harmful misunderstandings such as had occurred in the unfortunate case of the relief ship chartered by the World Food Programme which had not fully consulted the EPLF as to the route to follow in approaching Massawa and had been stopped by the EPLF. Accordingly, her organization called upon the Sub-Commission to recommend to the Commission on Human Rights that it call for a referendum sponsored by the United Nations and for the appointment of a special United Nations commission to supervise it.

12. Another area in which humanitarian law was being seriously violated was the Western Sahara, where the International Committee of the Red Cross had not been allowed to visit a single prisoner of war detained by Moroccan forces. In May 1989, moreover, 200 prisoners of war had been unconditionally released by the Polisario Front, but the Moroccan authorities had refused to repatriate them as they did not come under the United Nations peace plan.

13. Those two situations underlined the paramount importance of the adoption and enforcement of international instruments ensuring respect for human rights in armed conflicts, in compliance with the Geneva Conventions.

14. Mr. RAIANI (International Organization for the Elimination of All Forms of Racial Discrimination) said that some governments were not content with suppressing the right to freedom of opinion and expression in their own countries but were trying to deprive NGO representatives of that right outside their borders. That had also happened during sessions of the Sub-Commission. NGO representatives had been insulted, and intimidation had been practised by certain Governments to prevent them from carrying out their task.

15. Since his organization's efforts to engage in a dialogue with some Governments, specifically in Africa, were being ignored, he thought it more practical to discuss a situation in a more democratic State situated in Europe.

16. In Kosovo, Yugoslavia, on 5 July 1990 the Serbian authorities had ordered the police to occupy the television and radio centre in Pristina, forcing over 1,300 journalists and employees into the street. Several journalists had been beaten by the police. At the same time all radio stations in Kosovo broadcasting in the Albanian language had been closed down. On 7 August 1990 the Serbian authorities had ordered the closure of the only daily newspaper in Albanian, Rilindja, as well as the weekly magazine Zeri i rinise. Their only offence had been to report on cases of State-sponsored repression against the Albanian-speaking people in Kosovo, who had thus been left without any means of information in their mother tongue - a right guaranteed by the Yugoslav Constitution. The International Organization for the Elimination of All Forms of Racial Discrimination therefore called upon the Sub-Commission to request the Yugoslav authorities to respect the right to freedom of opinion and expression of all persons in Yugoslavia.

17. Mr. ALFONSO MARTINEZ said that he had a misgiving regarding Mr. van Boven's preliminary report concerning the right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms (E/CN.4/Sub.2/1990/10). Human rights were indivisible and interdependent, but Mr. van Boven's report suggested that violations of only certain rights would be compensated. Violations with regard to food, housing, social security and an adequate standard of living were not covered. How could the victims of violations of such rights be compensated? Many economic, social and cultural rights could not be put into practice in third world countries because of the unfair international economic order, which made it impossible to provide citizens with even elementary care. Mr. van Boven might wish to consider how that aspect could be included in his study.

18. Commenting on Mr. Varela Quiros's preliminary report on discrimination against HIV-infected people or people with AIDS (E/CN.4/Sub.2/1990/9), he noted that operative paragraph 2 of resolution 1989/17 called for a study of problems and causes of discrimination. At an earlier meeting the representative of a non-governmental organization had pointed out the dangers of transferring the cultural values of industrialized societies in the North to countries where those values were alien. The report prepared by Mr. Varela Quiros reflected the thinking on AIDS in certain regions but

overlooked many problems that affected millions of people in the third world and in the large cities of the most developed countries. AIDS was now a disease largely of the poor, and with every day that the economic crisis in the third world deepened, fewer resources would be available to combat it. In the report no mention was made of those who could not afford to pay for the expensive treatment.

19. Was it better to try to deal with AIDS through education or by trying to prevent it from spreading? Mrs. Palley's view of the situation in Cuba was incorrect. In no way was it demonstrated that to try to contain AIDS through education had produced results. Those countries which relied purely on education and self-control would see, in 10 years' time, the results of their policies as compared with those of Cuba's policy of seeking to preserve the health of everyone.

20. Mr. EYA-NCHAMA (International Movement for Fraternal Union among Races and Peoples) said that the International Movement for Fraternal Union amongst Races and Peoples agreed with the reply which Mr. van Boven had given to the question "From whom can compensation be sought?" in paragraphs 42 and 43 of his report (E/CN.4/Sub.2/1990/10). Some people who violated human rights, before abandoning their dictatorial power, provided themselves with guarantees that they would not be punished through amnesties, the cancellation of judicial proceedings and pardons. One form of compensation would be to make the perpetrators of human rights violations stand a fair trial. It was inadmissible that individuals such as Idi Amin or Baby Doc should spend the end of their lives, free from punishment, in large palaces bought with money stolen from their peoples and that no international authority could act against them.

21. Mrs. Warzazi's study on traditional practices affecting the health of women and children was going to raise problems as far as some African societies were concerned. For several years his organization had been working to eliminate certain harmful practices.

22. In their report on the right to freedom of opinion and expression (E/CN.4/Sub.2/1990/11), Mr. Türk and Mr. Joinet had drawn attention to the excessive power wielded by some groups within a system of press pluralism. That situation within a particular country was also reflected in North-South relations.

23. Although AIDS had initially been a disease affecting all social classes, it was now to be found mainly among the poorest. In Africa, apart from transmission through sexual activity and from mother to child, the disease was also being spread by the use of the same syringe for the treatment of more than one patient.

24. Mr. TEITELBAUM (American Association of Jurists) said that it was important to consider the problem of press concentrations. For example, one Frenchman in five read a Hersant publication, three publishers controlled two thirds of the newspapers read in Great Britain, Rupert Murdoch dominated two thirds of the newspapers in circulation in Australia and Alex Springer controlled all the daily press in the Federal Republic of Germany. Concentrations of the media, both written and audio-visual, were a real threat to democracy, and there were no international rules for stopping the process.

25. Article 10 of the European Convention on Human Rights was not very clear and required the very broad interpretation made by the European Commission which the Special Rapporteurs on the right to freedom of opinion and expression mentioned in paragraph 175 of their report (E/CN.4/Sub.2/1990/11). Only the American Convention on Human Rights, in article 13 (3), was more specific. The question needed to be more thoroughly explored and a useful tool for doing so was the MacBride report of 1980, published by UNESCO. Although it had given rise to controversies and had irritated the multinationals in the communications business, it contained some very interesting ideas. Persons of such high intellectual and democratic standing as Sean MacBride himself, co-founder of Amnesty International, Hubert Beuve Méry, founder of the newspaper Le Monde and Gabriel Garcia Marquez had contributed to the final version.

26. Mr. TARDU (International Centre of Sociological, Penal and Penitentiary Research and Studies) said that his organization was very interested in the Sub-Commission's project relating to compensation for victims of gross violations of human rights and fundamental freedoms. In 1988 it had been the first to draw the Sub-Commission's attention to the problem. He was therefore pleased to note that the Sub-Commission had adopted resolutions on the subject and that a preliminary report was now available. The problem was undoubtedly very complex and would need to be explored in much greater depth. The principle of compensation was now largely accepted in various international legal instruments mentioned by Mr. van Boven in his report (E/CN.4/Sub.2/1990/10). Another vital text was article 18 of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, since it referred to the principle of compensation and rehabilitation for victims of human rights violations even if the violations were not yet recognized as offences in national law. Although not legally binding, it was the broadest text so far adopted by the United Nations.

27. He hoped that future work would focus on the major issues involved in implementing the principle of compensation, particularly on the kind of violations which gave rise to it, the question of who bore responsibility, the form which compensation should take, and whether or not prescription should apply.

28. Care should be taken to ensure that the inclusion of the word "gross" in the titles of resolutions and reports was not used to prevent compensation in the case of violations which were not "gross"; all violations of human rights should entail compensation. The grounds for entitlement listed in paragraph 38 of Mr. van Boven's report were not complete. Religious discrimination, for instance, was not mentioned. An inductive method based on universally recognized cases of human rights violations should be used.

29. He had reservations in regard to paragraph 38 of Mr. van Boven's report and also concerning the comments on entities other than States contained in paragraph 42. He supported the opposition expressed by the Special Rapporteur to establishing a period of limitation for the exercise of the right to restitution, compensation and rehabilitation by or on behalf of victims of gross violations of human rights and fundamental freedoms. The concept of gross violations required further elucidation however.

30. In conclusion, he welcomed the decision by the Economic and Social Council to circulate the study by Mrs. Daes entitled "The Status of the Individual and Contemporary International Law". He regretted however, that the Commission on Human Rights had decided to postpone until 1991 consideration of the question of an international meeting of experts on issues related to human rights monitoring mechanisms.

31. Mr. VARELA QUIROS thanked members for their valuable comments on his preliminary report (E/CN.4/Sub.2/1990/9) and, in particular, Mrs. Warzazi who had pointed out that the impact of AIDS-related problems were more tragic in the least developed and developing countries than in the industrialized countries because the lack of resources limited activities and the consequences of the disease were therefore greater. He would investigate that aspect further. The comments made by Mrs. Palley and Mr. Eide on the cost of treatment and insurance were also very valid. He had noted each comment made and would take them into account in his further work.

32. He welcomed the comment by Mr. Alfonso Martínez regarding the situation in Cuba and would certainly take it into account. The thrust of his study had been to determine the general measures that could be taken to provide protection against AIDS while at the same time protecting human rights.

33. In conclusion he would like to mention that WHO had made a substantial contribution to his study and he appealed to that agency to continue its co-operation with him so that his next report would fully reflect the entire range of activities involved in the fight against AIDS.

34. Mr. van BOVEN thanked the many speakers who had made comments on his report (E/CN.4/Sub.2/1990/9).

35. Mrs. Daes had rightly stressed that the decisions and activities of world-wide human rights bodies should be taken into account; that aspect would be dealt with in Chapter III.

36. In connection with the comment of Mr. Eide, on how the international community could insist on issues in which national concerns were involved, he would deal with that aspect further in the guidelines.

37. In reply to Mrs. Ksentini, he would like to point out that collectivities would not be excluded from compensation under the terms of Sub-Commission resolution 1988/11 which, in its first operative paragraph, referred to "victims, either individually or collectively". That aspect had been dealt with in paragraph 37 of his report.

38. He would also look into the points raised by Mrs. Ksentini and Mr. Alfonso Martínez on the comprehensive nature of human rights. He would also look further into other aspects which might be relevant, such as those related to the environment and those relating to the export and sale of products which were harmful to health and life. On the issue mentioned by Mr. Tardu as to whether the victims of all violations of human rights were entitled to compensation, that aspect required further study and no firm conclusions could yet be drawn.

39. The CHAIRMAN said that the Sub-Commission had thus concluded its consideration of agenda item 4.

PROMOTION, PROTECTION AND RESTORATION OF HUMAN RIGHTS AT NATIONAL, REGIONAL AND INTERNATIONAL LEVELS (agenda item 17):

(a) PREVENTION OF DISCRIMINATION AND PROTECTION OF CHILDREN: HUMAN RIGHTS AND YOUTH;

(b) PREVENTION OF DISCRIMINATION AND PROTECTION OF WOMEN (E/CN.4/Sub.2/1990/45 and Corr.1; E/CN.4/Sub.2/1990/NGO/7 and 15; E/CN.4/Sub.2/1989/41 and Add.1)

HUMAN RIGHTS AND DISABILITY (agenda item 12) (E/CN.4/Sub.2/1988/11) HUMAN RIGHTS AND SCIENTIFIC AND TECHNOLOGICAL DEVELOPMENTS (agenda item 13) (E/CN.4/Sub.2/1990/7, 12 and 37 and Add.1-2; E/CN.4/Sub.2/1990/NGO/9 and 13; E/CN.4/Sub.2/1989/4)

ENCOURAGEMENT OF UNIVERSAL ACCEPTANCE OF HUMAN RIGHTS INSTRUMENTS (agenda item 14) (E/CN.4/Sub.2/1990/38)

THE RIGHT OF EVERYONE TO LEAVE ANY COUNTRY, INCLUDING HIS OWN, AND TO RETURN TO HIS COUNTRY (agenda item 19) (E/CN.4/Sub.2/1990/47; E/CN.4/Sub.2/1990/NGO/24)

40. Mr. MARTENSON (Under-Secretary-General for Human Rights), introducing agenda item 17, said that the Sub-Commission would be considering two different problems under the item namely: the prevention of discrimination and protection of children: human rights and youth; and the prevention of discrimination and protection of women.

41. He would first address the problems relating to the prevention of discrimination and protection of children: human rights and youth.

42. The activities implemented for children under the comprehensive action programme for human rights and by the agencies supported by the Centre for Human Rights were concerned in a multiplicity of ways with the promotion of respect for the human rights recognized to children and adolescents. That approach was consistent with the terms of resolution XX adopted at the International Conference on Human Rights held at Teheran in 1968 and of General Assembly resolution 2447 (XXIII) on the education of youth in the respect for human rights and fundamental freedoms.

43. Both the Sub-Commission and the Commission on Human Rights had taken a close interest in the issue of human rights and youth for a number of years past. The issue of the role of young people in the promotion and protection of human rights had been considered by the Commission on Human Rights every year since 1969 and on a biennial basis since 1985.

44. The Commission had recognized the importance of the role of youth in the overall development of States and had reaffirmed the need to educate children and adolescents so as to make them increasingly aware of the ideals of peace, understanding among nations, respect for human rights and fundamental liberties and equally the need to promote and protect the right of youth to appropriate training and the right to work, in order to reduce the serious problem of unemployment.

45. Those points had been reiterated in resolution 1989/58 adopted by the Commission at its forty-fifth session. The contents of the resolution had reaffirmed the importance of the role of youth in the overall process of promoting and protecting the entire range of fundamental rights and freedoms while emphasizing the value attached by young people to the process of peace and co-operation among States, a process which was closely linked to respect, for human rights and fundamental freedoms within each State.

46. The same resolution had called upon all States, all governmental and non-governmental organizations, the United Nations organs concerned and the specialized agencies to devote constant attention to the exercise by young people of all fundamental rights and freedoms; including the right to vocational training and the right to work, in order to relieve the problems of underemployment and indeed of unemployment of which young people were the main victims and which in themselves constituted a major obstacle to the development process.

47. The Commission also called upon States to take appropriate action in order to guarantee young people true respect of the other fundamental rights and freedoms to which they, like any individual, were entitled.

48. Another area of concern under the item was the issue of conscientious objections to military service. In its resolution 1989/59 of 8 March 1989, the Commission had recognized the right of everyone to have conscientious objections to military service as a legitimate exercise of the right to freedom of thought, conscience and religion.

49. The Sub-Commission, for its part, had decided at its thirty-seventh session, to include in its provisional agenda for the thirty-eighth session a sub-item entitled "Prevention of discrimination and protection of children". When it had considered that item at its thirty-eighth session, the Sub-Commission, in resolution 1985/12, had appointed a Special Rapporteur, Mr. Dumitru Mazilu, to prepare a report on human rights and youth, analysing the efforts and measures for securing the implementation and enjoyment by youth of human rights, particularly the right to life, education and work, in order to facilitate the Sub-Commission's discussion of the topic.

50. As members were well aware, the Sub-Commission had not been in a position to consider the report of the Special Rapporteur until its forty-first session, at which it had had before it the report prepared by Mr. Dumitru Mazilu contained in E/CN.4/Sub.2/1989/41 and Add.1. The reasons for that delay were indeed well known.

51. The Advisory Opinion of the International Court of Justice that had been requested by the Economic and Social Council as an outcome of the discussion on the subject by the Sub-Commission and the Commission, on the legal question of the applicability of article IV, section 22, of the Convention on the Privileges and Immunities of the United Nations of 13 February 1946, in the case of Mr. Dumitru Mazilu, as Special Rapporteur, had been distributed to the members of the Sub-Commission.

52. Having considered the report of Mr. Mazilu, the Sub-Commission, in its resolution 1989/45, had requested the Special Rapporteur to update his report and to present it in person to the forty-second session, having noted with great regret that the Special Rapporteur had been unable to come personally to

Geneva to present the report. The Special Rapporteur had submitted his updated report, which was contained in document E/CN.4/Sub.2/1990/45, and he was particularly pleased to see that Mr. Mazilu was present in the Sub-Commission and prepared to present his report in person.

53. Turning to sub-item (b), he said that in 1985, the Sub-Commission had decided to include in its agenda a new item on the prevention of discrimination and protection of women. Under that item, members might wish to recall that, in 1970, the General Assembly had adopted a unified long-term United Nations programme for the advancement of women, contained in its resolution 2716 (XXV), within the context of the Second United Nations Development Decade and had proclaimed 1975 to be International Women's Year by resolution 3010 (XXVII). Those initiatives had given new impetus to action taken at the national, regional and international levels to end discrimination against women and promote their equal participation in society; that process had been furthered by subsequent decisions of the General Assembly.

54. The World Conference to Review and Appraise the Achievements of the United Nations Decade for Women, held in Nairobi in 1985, had identified further action to promote equality between men and women, to ensure the full integration of women in the development effort and to increase women's contribution to the strengthening of world peace.

55. The adoption of the Nairobi Forward Looking Strategies for the Advancement of Women by the 1985 World Conference, endorsed by the General Assembly in its resolution 40/108, had been a major milestone in that ongoing process. The strategies were based on the three objectives of the Decade for Women, namely, equality, development and peace. They were also based on the premise that those objectives were interrelated and mutually reinforcing.

56. In 1987, the Sub-Commission, as its thirty-ninth session, had adopted resolution 1987/26, entitled "The role and equal participation of women in development", in which it had expressed its belief that it should devote greater attention to the prevention of discrimination against women, particularly in relation to development, and in co-ordination with other relevant bodies of the United Nations, and had decided to consider at its forty-first and future sessions, and in connection with the item on its agenda entitled "The new international economic order and the promotion of human rights", a sub-item entitled "The role and equal participation of women in development".

57. The Sub-Commission might also recall that the Convention on the Elimination of All Forms of Discrimination Against Women had entered into force on 3 September 1981. Since then, progress had been made in amending legal provisions for equal participation of women, the most significant being the adoption and subsequent ratification of, or accession to the Convention on the Elimination of All Forms of Discrimination Against Women by 102 States.

58. Finally, he would like to draw the attention of the Sub-Commission to General Assembly resolution 44/77 of 8 December 1989. In that resolution the General Assembly, inter alia, had called upon Member States to give priority in the framework of the Forward Looking Strategies, to policies and programmes relating to the sub-theme "Employment, Health and Education", and had requested the relevant United Nations bodies to continue to provide

action-oriented inputs. The Commission on the Status of Women had been requested to consider the question of holding in 1995 a world conference on women and to report to the Assembly at its forty-fifth session. The Economic and Social Council, in its resolution 1990/12, had recommended to the General Assembly that such a conference be held in 1995. The General Assembly, in its above-mentioned resolution, further requested the Secretary-General to continue updating the World Survey on the Role of Women in Development with a view to submitting a preliminary version, in 1993 and a final version in 1994, to the Economic and Social Council, giving special attention to worsening conditions for the incorporation of women into the labour force as well as to the impact of reduced expenditures on social services on women's opportunities for education, health and child care.

59. Introducing item 12, he recalled that, by its resolution 1984/20, the Sub-Commission had decided to inscribe on the agenda of its thirty-eighth session, an item entitled "Human rights and disability".

60. In the same resolution, the Sub-Commission had also decided to appoint Mr. Leandro Despouy as Special Rapporteur to undertake the comprehensive study requested by the Economic and Social Council in resolution 1984/26. The Sub-Commission requested the Special Rapporteur to consider a number of specific aspects in his study and to present it to the Sub-Commission for consideration.

61. At its thirty-eighth session, in 1985, the Sub-Commission had considered the preliminary report of the Special Rapporteur (E/CN.4/Sub.2/1985/32) and, at its fortieth session, in 1988, the progress report of the Special Rapporteur (E/CN.4/Sub.2/1988/11).

62. For the reasons put forward by the Special Rapporteur in his previous statement, his final report had not been submitted at the current session of the Sub-Commission. The Centre was doing its best within its limited resources to render assistance to Mr. Leandro Despouy and, thus, to enable him to prepare and submit his report at the forty-third session of the Sub-Commission.

63. Introducing item 13, he said that, since the Proclamation of Teheran, adopted by the International Conference on Human Rights on 13 May 1968, the United Nations had taken necessary measures to ensure that the utilization of scientific and technological progress promoted the fullest realizatio[illegible]f human rights and fundamental freedoms.

64. During the period between 1971 and 1976, a number of reports on various aspects of human rights and scientific developments had been prepared by the Secretary-General and the specialized agencies concerned and considered by the Commission on Human Rights and the General Assembly. The Sub-Commission for its part had made a particular contribution to that subject-matter and Special Rapporteurs appointed by the Sub-Commission had prepared studies relating to various aspects of the impact of scientific and technological developments on the realization of human rights. Those studies had included the Study on Principles, Guidelines and Guarantees for the Protection of Persons Detained on Grounds of Mental Ill-health or Suffering from Mental Disorder submitted by Mrs. Erica-Irene Daes, which dealt with the protection of human rights and the fundamental freedoms of persons who were mentally ill or suffering from mental disorder. The Sub-Commission and then the Commission

had made tangible progress in relation to the elaboration of a draft body of principles and guarantees for the protection of those persons and for the improvement of their legal and human rights and mental health care. The Working Group established by the Commission on the subject would meet later in 1990 to continue its consideration of the draft body of principles with a view to submitting the draft to the next session of the Commission.

65. Another study undertaken by the Sub-Commission concerned relevant guidelines in the field of computerized personal files submitted by Mr. Joinet. As members were aware, the General Assembly, at its forthcoming session, would consider and then adopt the revised version of the guidelines prepared by Mr. Joinet and submitted to the Assembly by the Commission and the Economic and Social Council.

66. Consideration of new aspects of the impact of science and technology on human rights had been initiated by the Sub-Commission. In its decision 1989/108, it had asked Mrs. Ksentini to prepare, for submission to, and consideration at, its forty-second session, a concise note setting forth methods by which a study on the problems of the environment and its relation to human rights could be made. The concise note of Mrs. Ksentini was before the Sub-Commission in document E/CN.4/Sub.2/1990/12.

67. Other aspects which the Sub-Commission might wish to consider under the item related to the interrelationship between human rights and the elimination of chemical weapons and the movement and dumping of toxic and dangerous products and wastes. Under those issues, the Sub-Commission had requested the Secretary-General to submit relevant reports which were before the Sub-Commission in documents E/CN.4/Sub.2/1990/7, 37 and Add.1-3.

68. He hoped that the deliberations of the Sub-Commission would contribute to efforts by the international community to prevent the future use of chemical weapons and improve the human environment in the interests of life, health and adequate standards of living of every human person in all parts of the common globe.

69. He introduced item 14, recalling that the Sub-Commission, by its resolution 1 B (XXXII) of 5 September 1979, had decided to establish each year a sessional working group composed of five members to consider ways and means of encouraging Governments which had not yet done so to ratify or accede to international human rights instruments, including those in the list of instruments contained in paragraph 1 of its resolution 1 B (XXXII).

70. By resolution 1985/5, the Sub-Commission had decided to suspend the work of the Working Group on the Encouragement of Universal Acceptance of Human Rights Instruments and to request the Chairman of the Sub-Commission to appoint one of its members to report to it at its fortieth session on information received under resolution 1985/5. Pursuant to that decision, the Chairman had appointed Mrs. Ksentini who had made a report to the Sub-Commission on the subject at its fortieth session.

71. At the same session, by resolution 1988/30, the Sub-Commission had requested its Chairman again to appoint a member to report on that subject to the Sub-Commission's forty-second session. The member appointed pursuant to that resolution was Mr. Hatano who would be making his report shortly.

72. With regard to the request contained in paragraph 6 of resolution 1988/30 that the Secretary-General should inform the Sub-Commission on his endeavours under that resolution, he wished to point out that the Secretary-General, when he received various Heads of State or Ministers for Foreign Affairs on the occasion of his official contacts at Headquarters during sessions of the General Assembly, or during his official visits to the capitals of Member States, used his good offices, as appropriate, to promote the ratification of, or accession to international human rights instruments. The same applied mutatis mutandis to himself and the Centre for Human Rights.

73. Developments that had taken place in connection with the ratification of, or accession to, human rights instruments since the fortieth session of the Sub-Commission were discussed in document E/CN.4/Sub.2/1990/38 which was before the Sub-Commission.

74. Introducing agenda item 19, he emphasized that the item was an important one and that over the years other United Nations bodies had repeatedly reaffirmed the right of everyone to leave any country, including his own and to return to his country. Furthermore, the International Covenant on Civil and Political Rights, in article 12, specifically provided for the protection of that right, and other international instruments had addressed the problem of discrimination in respect of that right as well. As members were aware, under the provisions of the Covenant, States were obliged to respect the right of everyone to leave any country, including his own, to protect foreign citizens in those territories and guarantee respect for their free movement. At a time of escalation of tensions, he renewed his appeal to all countries of the Organization to respect the human rights and fundamental freedoms of all, nationals and foreigners alike. As members were aware, the issue had recently given rise to Security Council resolution 664 of 18 August 1990, which had recalled those obligations under international law and demanded that no action be taken to jeopardize the safety or health of those nationals and that action should be taken to permit and facilitate their immediate departure.

75. It was not the first time that the Sub-Commission had considered aspects related to the right to leave and return to any country, including one's own. In 1983, the Sub-Commission had appointed Mr. Mubanga-Chipoya to prepare an analysis of current trends and developments in respect of the right of everyone to leave any country, including his own, and to return to his country, and to have the possibility to enter other countries, without discrimination or hindrance, especially of the right to employment, taking into account the need to avoid the phenomenon of the brain drain from developing countries and the question of compensation to those countries for the loss incurred, and to study, in particular, the extent of restrictions permissible under article 12, paragraph 3, of the International Covenant on Civil and Political Rights. The Special Rapporteur had also been mandated to prepare, for consideration by the Sub-Commission, a draft declaration on the subject. The final report and draft declaration prepared by the Special Rapporteur were considered in the Sub-Commission at its fortieth and forty-first sessions.

76. At its forty-first session, the Sub-Commission, having considered the comments received from Governments, specialized agencies, intergovernmental and non-governmental organizations on the draft declaration (E/CN.4/Sub.2/1989/44 and Add.1-7) had adopted resolution 1989/25. By that

resolution, the Sub-Commission had decided to establish, at its forty-second session, a sessional open-ended working group with a view to preparing a revised version of the draft declaration on the subject-matter.

77. In conclusion, he wished to draw the attention of members to Commission resolution 1989/39, in which the Commission had requested the Sub-Commission to submit to it, as soon as possible, a draft declaration.

78. The CHAIRMAN said that the Sub-Commission would take up agenda item 17.

79. On behalf of the Sub-Commission, he welcomed Mr. Mazilu, the Special Rapporteur on human rights and youth. Mr. Mazilu's mandate dated back to 1985, but prevailing circumstances had prevented him from coming to Geneva to present his report, notwithstanding Sub-Commission resolutions insisting on his presence. He asked members, when listening to Mr. Mazilu, to bear those circumstances in mind.

80. Mr. MAZILU, Special Rapporteur, said that, after a long detention, he wished to express his profound gratitude to the Sub-Commission for its invaluable help and support over the years. The Sub-Commission's efforts had been of great importance not only in encouraging him in his work but even in keeping his family and himself alive.

81. It would be difficult for members to imagine the emotion with which he had followed the statements by Mr. Martenson and his appreciation of the steps taken by Mr. Leandro Despouy, the Chairman of the Sub-Commission during the second year of his detention, to persuade the Romanian Government to release him. Mr. Despouy had understood his situation particularly well since he himself had suffered personally in his own country a few years earlier because of his campaign for human rights. He would never forget Mr. Eide's tireless fight against the manipulations of the Romanian Government during those tragic years. He had been conscious of the friendship of Mrs. Erika-Irene Daes who, in August 1988, had pointed out in very clear terms that the United Nations would never abandon his report and that of Mr. Whittaker, another staunch campaigner for a better world. He had followed with sincere emotion the efforts by Mr. Joinet who had firmly rejected all the inventions of the Romanian representatives and had been adamant in his determination to secure the settlement of his case. He wished to express his profound respect for Mr. van Boven's actions to block the manoeuvres of the Ceausescu Government and to protect his family life. He also wished to express his appreciation to Mr. Chernichenko, Mr. Carey, Mr. Bandare and Mr. Yimer as well as the colleagues in the Sub-Commission from Japan, Brazil, the Philippines, Morocco, Jordan and Egypt. He would never forget that the expert from the United States had defended his case before the International Court of Justice.

82. He had greatly appreciated the efforts made in the Commission by the representatives of the United States of America, the United Kingdom, France, the Federal Republic of Germany and many other countries to bring his case before the International Court of Justice.

83. He wished to express sincere thanks to Mr. Fleishauer, who had defended his case in the Court. He was extremely appreciative of the help of the Centre for Human Rights and, in particular, of Mr. McCarthy and his colleagues.

84. He expressed his appreciation of the help given by the international media and thanked the Swiss authorities for their support.

85. Because of the special attention to which he had been subjected by the secret police of the Ceausescu régime it had been impossible for him to work normally on his report, and he had received practically no information from governmental or non-governmental organizations. That explained the frequent references in his earlier report to the violations of the rights and freedoms of views in his own country. Only in 1990 had it been possible for him to come to the Centre for Human Rights to examine the information available on the rights and freedoms of youth. However, much of that information was irrelevant and outdated because it referred to the situation of human rights and youth before the recent dramatic changes in the countries of Eastern Europe. Moreover, the information was incomplete and much more information was needed.

86. He therefore hoped that the Sub-Commission would accept his proposal to ask Governments, governmental and non-governmental organizations to send the necessary information and to transmit their views as soon as possible. He had made some preliminary suggestions on provisions to ensure that such fundamental rights of young people as the rights to life, education and work would be guaranteed throughout the world and that young people would have the right to enjoy the highest attainable standard of physical and mental health.

87. Today there was a much greater awareness of the world community's duty to guarantee the right of young people to the free movement of ideas and to unrestricted contacts with other young people throughout the world. It was also the duty of the world community to guarantee that young people had the right to a real democracy, the right to freedom of opinion and expression, the right to freedom of peaceful assembly and association. The liberty and security of every young man and woman had to be guaranteed. More thought should be given to the right of young people to a happy future. The younger generation had the right to take part in the fight for a society of equality in wealth, not in poverty. With the help of his colleagues he hoped to present an updated text to the Sub-Commission the following year.

88. Since the situation of human rights in Romania was before the Commission on Human Rights, he had sent his analysis of the situation to the Commission: he was, however, giving a copy of that analysis to the Chairman. He had also prepared a letter informing the Sub-Commission of what had happened to him following the decision handed down by the International Court of Justice.

89. The members of the Sub-Commission had shown the world the odious face of dictatorship in Romania in a very difficult confrontation with the representatives of the Ceausescu régime in the Sub-Commission itself. The Sub-Commission had had the courage to reject that régime's lies and to defend the truth. Its fight for the noble cause of human rights in the world was an outstanding one of which the world could be proud. The members of the Sub-Commission had had the intelligence and the courage to combat the unspeakable manoeuvres of a tyrannical Government, and to fight for truth and justice, regardless of the cost.

90. The CHAIRMAN thanked Mr. Mazilu for his statement. All the members of the Sub-Commission were gratified by his presence and had been deeply moved and honoured by his tribute to them.

91. The members of the Sub-Commission understood the difficult circumstances in which Mr. Mazilu was preparing his report and he was sure that they would agree to his request to be given another year in which to update his report.

92. Mr. Mazilu's letters would be circulated to the members of the Sub-Commission for information.

93. Mr. DESPOUY, responding to Mr. Mazilu's words of gratitude, said that he was very happy that Mr. Mazilu was once again able to attend the session of the Sub-Commission.

94. The submission of Mr. Mazilu's case to the International Court of Justice had set an important precedent for the experts of the Sub-Commission and other human rights bodies. As Chairman of the Sub-Commission at the time when Mr. Mazilu had been prevented from attending its session, he had said that the situation was a challenge for the Sub-Commission, which could not talk about definitions of human rights if it was unable to defend a colleague and wrest him from the clutches of the Romanian dictatorship.

95. He wished to pay a particular tribute to the role of the secretariat in the Mazilu case, and to its objectivity and impartiality, which had not always been sufficiently recognized.

96. Not all had believed in the letters sent by Mr. Mazilu with such difficulty to the Sub-Commission; some had preferred to believe in the now discredited dictatorship. That experience would be useful in the future if the fate of a colleague was ever at stake again.

97. Mr. EIDE said that Mr. Mazilu's presence at the Sub-Commission's session showed how essential independence was for experts for whom truth was far more important than complying with requests or pressures from Governments, whether their own or others. He was lucky in that his own country recognized the independence of experts on the Sub-Commission. Other experts had difficulties, however, and deserved to be honoured for their courage. Indeed, some might not have been able to attend the sessions of the Sub-Commission had it not been for the focus on independence that was a result of the Mazilu case.

98. Another benefit of the case was a greater awareness that replies from Governments should not be taken at face value. Members of the Sub-Commission needed to make their own assessments in all cases.

99. Turning to Mr. Mazilu's report (E/CN.4/Sub.2/1990/45), he said that the most important point it made was the need for young people to have freedom of information and expression and not to be subjected to propaganda and indoctrination.

100. Mr. Hatano took the Chair.

101. Mrs. DAES said that she had been very moved by Mr. Mazilu's statement. Mr. Mazilu's presence was a victory for the Sub-Commission, which had taken every possible step to help him when he had been deprived of his freedom. She congratulated Mr. Mazilu and hoped that he would continue his work in freedom and happiness.

102. Turning to Mr. Mazilu's updated report (E/CN.4/Sub.2/1990/45), she endorsed the arguments that there was a need for a new approach to the subject of youth and human rights since the recent events in Europe. She supported the proposals that the Special Rapporteur should be given more time to prepare his study and suggested to him that the proposed charter of the rights and freedoms of youth should be reconsidered and redrafted when the Sub-Commission was in a position to consider his new progress report.

103. Mr. GUISSE said that Mr. Mazilu was an example to all who were defending the cause of human rights against its manifold enemies throughout the world.

104. With regard to Mr. Mazilu's updated report (E/CN.4/Sub.2/1990/45), he asked Mr. Mazilu to take note that young people should be closely associated with the solution of the problem affecting them. The problems of human rights and youth could not be left in the hands of adults alone since they looked at the matter from their own point of view and might discriminate against a vulnerable sector of the population.

105. Mr. TREAT expressed his satisfaction at Mr. Mazilu's presence in the Sub-Commission's meeting.

106. It was appropriate that Mr. Mazilu should be working on the human rights of youth since young people had the task of defending the freedoms epitomized by him.

107. He looked forward to receiving Mr. Mazilu's further report.

108. Mr. JOINET said that it was very important for Mr. Mazilu to give attention in his final report to the participation of young people in armed conflicts whether national or international.

109. He said that Mr. Mazilu's case represented a considerable legal achievement and would benefit all independent expert bodies, and he wished to express appreciation of the role of non-governmental organizations in drawing attention to his case.

110. Mr. MAXIM congratulated Mr. Mazilu on the efforts he had made to submit his report, which though brief was full of very pertinent ideas.

111. The problems covered by the report were highly topical, both for developed and developing countries. The report established a very relevant link between political systems and the conditions required for young people to enjoy human rights fully.

112. He fully agreed that concentration of power in the hands of one person or a small group could only lead to dictatorship. In that regard the report provided further food for thought. He also agreed that no assessment of the state of human rights in the world could be complete without taking account of the situation of the younger generation, for in many countries millions of young people were deprived of the right to enjoy their youth.

113. The summary of the major violations of the human rights of young people and their causes deserved the attention of the members of the Sub-Commission, as those violations were increasing throughout the world. Most of the victims of the continuing armed conflicts in various parts of the world were young

people. They were also the main victims of malnutrition, poor housing, lack of medical care, unemployment and drug addiction. In addition certain economic structures, institutional machinery, the barbaric and irrational exploitation of natural resources, environmental pollution and lack of funds for education were factors that seriously jeopardized the future of young people.

114. Experience had shown that the problems of youth had to be solved. On that solution the future of society might hinge. It was not enough to proclaim rights and freedoms, for young people today were losing confidence in ideals. They were no longer content with advice and promises but were aware of their future role in society and had shown that they were capable of setting an example even at the sacrifice of their own lives.

115. The report, in tackling all those issues in a realistic way, had reminded expert members of the Sub-Commission and government observers of their important responsibilities.

116. It would be very useful to have an exchange of views on the best way of keeping the question under observation by the United Nations. Work directed towards the adoption of a charter or declaration of the rights and freedoms of youth by the General Assembly might well be the right solution.

117. Mrs. BAUTISTA, having welcomed Mr. Mazilu, said that the members of the Sub-Commission appreciated his acknowledgement of their role in the struggle to free him from the clutches of the Romanian dictatorship and in insisting on his right as a United Nations expert to present his report in person.

118. As Special Rapporteur for the protection of the human rights of United Nations staff members, experts and their families, she derived particular pleasure from the fact that Mr. Mazilu's rights as an expert had been upheld by the International Court of Justice.

119. She hoped that efforts on behalf of the more than 100 United Nations staff members still missing or detained would be equally successful.

120. She looked forward to Mr. Mazilu's updated report on the subject of human rights and youth, a subject of great significance, since the commitment of young people to developing and promoting human rights was essential to the continued existence of democratic forms of government.

121. Mr. ILKAHANAF, recalled his sponsorship of the Sub-Commission's resolutions insisting on the need for Mr. Mazilu to be allowed to attend its sessions and present his report. He was greatly pleased at Mr. Mazilu's presence.

122. He praised the persistence and courage of Mr. Mazilu and his family which had encouraged the members of the Sub-Commission to continue the pressure for his release.

123. He looked forward to Mr. Mazilu's updated report in 1991.

124. Mr. EIDE said that, while recognizing how important youth could be in the struggle for human rights, it must also be taken into account that young people were sometimes very emotional and easily misled by movements which

involved them in desperate action and extensive violence. He hoped that the Special Rapporteur would look into that situation; young people must not only be encouraged to struggle for human rights, but must also recognize the importance of respecting the human rights of those whom they saw as their enemies. There had been tragic developments, particularly in the context of ethnic conflicts, where elements among young people had participated in activities which had made it impossible to restore peace and democracy for a long time in the countries concerned.

125. Mrs. SEIGEL (International Council of Jewish Women) said that she wished to speak on item 17 (b) on behalf of her own organization and 23 non-governmental organizations. The non-governmental organizations in question were naturally pleased that the sub-item on the prevention of discrimination and protection of women was now well established on the Sub-Commission's agenda, but feared that it would remain so for some time, since the reports of both the Commission on the Status of Women and the Committee on the Elimination of All Forms of Discrimination against Women indicated that equality for women was a goal still to be achieved. There had been some advance in de jure recognition but de facto progress remained far behind. Emphasis must now be placed on implementation.

126. In its first review of the implementation of the Nairobi Forward-Looking Strategies, the Commission on the Status of Women had discussed strengthening national machinery where it existed and creating it where it did not, which meant establishing the legal and administrative structures for the advancement of women at the national level. Assuring full participation of women in decision-making, a priority item for the next session of the Commission on the Status of Women, was an item of interest to the Sub-Commission.

127. She also considered that the Sub-Commission and the Working Group on Detention should take note that the Commission on the Status of Women had adopted a resolution on physical violence against detained women which was specific to their sex. The Commission had also paid particular attention to women's participation in the development process, proposing specific measures to that end, and had called for the integration of women in the International Development Strategy for the Fourth United Nations Development Decade.

128. She noted in the annotated agenda under item 17 (b) a reference to the International Year of the Family. The non-governmental organizations on whose behalf she was speaking did not believe that the family was of concern only to women: they believed in the partnership of men and women both in the family and outside. They noted that the General Assembly had designated the Commission for Social Development as the co-ordinating body for the International Year of the Family.

129. The organizations which she represented wished to emphasize the need for closer co-ordination between the Sub-Commission, the Commission on Human Rights and the Commission on the Status of Women, as well as the Centre for Human Rights and the Vienna International Centre.

130. They looked forward to a further study by Mrs. Warzazi on the question of traditional practices affecting the health of women and children, and attached great importance to the proposed regional seminars in Africa and Asia.

131. Ms. BURER (Pax Christi International), speaking on item 17 (a), said that her organization had been gratified by the recognition in the Commission on Human Rights at its forty-third session in 1987 of conscientious objection to military service as a human right consistant with articles 3 and 18 of the Universal Declaration of Human Rights, and the reaffirmation of that recognition at the Commission's forty-fifth session in 1989. It was regrettable that that human right could not be exercised by young people conscripted for combatant service in many armies and guerrilla forces.

132. Pax Christi International was among the non-governmental organizations opposing article 38 of the Convention on the Rights of the Child which could be seen as contradicting the essential objective of that Convention in that it allowed children of 15 years to be subject to participation in combat duty in armed conflict. The protection of children called for a study by the Secretary-General on the recruitment of children into the armed forces of Governments and guerrilla units, a worthwhile effort, despite the difficulty of collecting data. The help of the specialized agencies, including UNICEF would be important in gathering factual material. Her organization would be ready to give all possible assistance in gathering material that was vital to a very vulnerable part of the human community.

133. The President of Pax Christi-United States of America, reporting on a recent visit to Central America, had said that life for most peopole in Central America was a constant struggle for survival. Institutionalized violence and extreme poverty were rife in Guatemala, El Salvador, Honduras, Nicaragua and other countries. For children, the combination of routine repression, war and the lack of basic human resources was especially disturbing and placed them at great risk. In addition to the deadly problems of war and poverty, teenage boys had to deal with the ugly possibilty of forced recruitment into the armed forces, an inhuman policy that jeopardized young lives and denied young people the possibility of normal development and the prospect of becoming healthy adults and productive members of society. He had also said that the time had come to denounce the forced recruitment of young people in Central America and elsewhere and to lay the foundation for a better future, where children could be children and youth could live and grow up in peace.

134. Ms. BERRY (Commission of Churches on International Affairs), referring to the question of internally displaced persons, said that currently between 30 and 40 million people had been uprooted from their communities but remained within their national borders, suffering serious protection and assistance problems and massive human rights violations. Unlike refugees, who were uprooted for similar causes but had managed to cross into another country, internally displaced persons had been virtually ignored by the international community and particularly by the United Nations system. Given the scope of the problem and the urgent needs of those individuals, the problem must be tackled seriously by United Nations human rights bodies.

135. The plight of the internally displaced was often far worse than that of refugees, precisely because they were still in their home countries. Moreover, they often had fewer resources, were in worse physical condition and lacked the skills of refugees who managed to leave their country. Displaced populations seemed to be composed mainly of women, children, the elderly and the handicapped.

136. Refugees could appeal to a host of international conventions and procedures. For those displaced within their own countries, however, there was no specific international organization to which they could appeal for protection or assistance; and there was no body of international law designed specifically for their needs, even though the basic human rights instruments and the Geneva Conventions protecting the victims of war were applicable to the situation of the internally displaced. Since the UNHCR was mandated to work with those outside their home countries, it was usually unable to respond. The International Committee of the Red Cross gave the greatest priority to helping civilians in times of conflict but was reluctant to jeopardize that work by involvement with groups of displaced persons who had moved out of conflict zones to areas still under the sovereignty of the national Government.

137. The churches were increasingly recognizing that relief efforts were not enough to respond to the urgent human rights violations of the world's displaced. Greater attention must be focused on their plight and its causes. The international human rights machinery must be challenged to respond in creative and humane ways to those massive needs. Her organization therefore called for a United Nations study on the status of internally displaced world-wide.

138. On the question of human rights and the new democracies, while recent developments in Eastern Europe, Latin America and Asia were to be welcomed, did a change in Government, even to an avowedly democratic one, necessarily mean the end of human rights abuses in the country concerned? New democracies had admitted to difficulties in ensuring respect for human rights. Some experienced a period of instability with sporadic incidents of violence, while others complained of ingrained authoritarian institutions that proved stubborn and resistant to change, and others again were racked by post-revolution insurgencies and attempted coups d'état.

139. A review of current situations revealed that the so-called "new democracies" were indeed encountering difficulties in the promotion of human rights at the national, regional and international levels. Peru, for example, on its third term under civilian rule, was suffering from escalating civil violence and social uncertainty. It had the highest rate of known disappearances in the world, but to date not one person had been found responsible or guilty.

140. In the Philippines, the Asian Human Rights Commission had reported in January 1988 that recent moves to increase the powers of the military at the expense of human rights were already bearing fruit.

141. Mrs. YAZZIE (International Indian Treaty Council), speaking on the prevention of discrimination and protection of Navajo women and children within the Navajo/Hopi relocation land area, on behalf of the Cactus Valley/Red Willow Springs Sovereign Community, Arizona, said that formerly, Navajo women had held high positions of leadership and played important roles within their Navajo society, had always represented the home and backbone of community life, the model of education for the children from generation to generation, keeping the family together through the clan system, providing the nourishment to sustain life, and teaching the principles of life to Navajo people of all ages. A Navajo woman aged 74 had said that the Navajo religion was nature, interwoven into daily life and existing where the Creator had

placed the Navajo people; their ceremonies and prayers had to be performed where they lived, on their land, with their sacred trees, plants, herbs and animals. Their religion was based on a clan system and families must stay together in traditional communities. They could not conduct their sacred ceremonies away from their sacred places.

142. Today the role and status of the Navajo woman had changed. She was no longer the centre of the home, her family relationships had broken up, she could no longer provide a pattern of education and children had become disrespectful towards their mothers and elders. The reason was that women in the Cactus Valley/Red Willow Springs Community were being forced off their land and away from their homes by the United States Government's forced-relocation laws. Women and children had nowhere to go, no place to call home. Children were on the streets, abandoned, abused, or left homeless without parents; alcoholism, drug abuse, school drop-outs, teenage pregnancies and suicides had all increased.

143. As a proud Native American Community, the Navajos were not seeking sympathy or pity. They wanted forced relocation in the Cactus Valley/Red Willow Spring communities to stop. They wanted to remind the Sub-Commission that women and children always suffered the most from conflicts, landlessness and oppression and to urge it to pay more attention to the need to adopt special measures, in all countries, for the protection of women and children. It was not enough just to have an item on the agenda.

144. Ms. OLSEM (Women's International League for Peace and Freedom) said that her organization had recently organized a seminar in San José, Costa Rica, on the effects of militarism on women's lives, attended by women from 18 countries, mostly the Americas and Europe. The participants had found that political and civil rights could not be separated from economic, social and cultural rights and that, in fact, the violation of economic rights most often resulted in the repression of political and civil rights, in turn leading to gross violations of human rights, including torture, disappearances and death, of individuals and whole communities.

145. Many Latin American countries had borrowed heavily from foreign Governments and banks and were now forced to accept structural adjustment policies imposed by the International Monetary Fund; that particularly affected women, who had to work harder, but had less money with which to support their families. With soaring food prices, reduced health and social services, increased infant mortality, workers laid off, the people's right to employment and to an adequate standard of living and food were being denied.

146. With the violation of economic and social rights, discontent increased, and trade unions, women, peasants and students demonstrated. The Government sent in the army, demonstrations were suppressed, leaders were detained, tortured and killed. Rape was a special component of torture for most women. To terrorize the population, victims were displayed as an "example" to all who attempted to change the status quo. An indigenous woman from Guatemala had told how her brother's tortured corpse had been delivered to her mother on Mother's Day.

147. The imperialist policies of foreign countries and transnational corporations added to the economic oppression and political repression in many

Latin American countries. Transnational corporations, taking advantage of the people's need to find work, made big profits while subjecting them to dangerous conditions, long hours and low wages.

148. The United States imperialist policies took many forms in Latin America. The United States justified its continued intervention and increased militarization of Latin America in the name of its "war on drugs"; as it had its invasion of Panama, which had caused more civilian deaths and damage to property than officially reported. The United States had also sprayed alleged fields of poppies destroying the crops of indigenous people in some of the poorest regions of Guatemala, where the loss of one crop might mean children dying.

149. The military presence in Honduras, Peru and Bolivia had brought further repression, disease and suffering to the people. Foreign troops were spreading AIDS among the local women in Honduras, while, in Colombia, police and soldiers, dressed like Rambo and trained in torture techniques, abused and insulted women.

150. The women meeting at the seminar in Costa Rica had strongly condemned the increasing militarization of their communities. They rejected foreign and military influence and demanded that Governments and the United Nations should take up the question of justice. They requested the Sub-Commission to help to expose the root causes of violence, and implored the United Nations to take measures to break the cycle of violence against women and children and against entire communities and their ways of life.

151. Mr. ROMANI (Latin American Federation of Associations of Relatives of Disappeared Detainees) said that his organization had been involved in drawing up the International Convention on the Rights of the Child and had welcomed its adoption. However, children's rights were still being violated. Statistics indicated that between 35 and 40 per cent of Latin American children suffered from malnutrition.

152. The so-called "street children", roving the towns like flocks of birds posed a serious problem. Reports had been received of the arbitrary execution of such children in Colombia, Brazil and Haiti. In 1988, 25 children below the age of 10 had disappeared both in Guatemala and in El Salvador.

153. The Grandmothers of the Plaza de Mayo, a member of the Federation, urged that the children taken from their families should be returned to them so that a child would know that it had never been abandoned, but was regaining its stolen identity and its roots, and being freed from the lies and secrecy in which it had lived since being kidnapped. He referred to the case of a child called Simon, son of Sara Mendez and Mauricio Gatti who had been detained by soldiers with his mother Buenos Aires, Argentina on 13 July 1976 when he was only 20 days old. Since that date he had disappeared, but his mother, who was Uruguayan, had been sent to Uruguay illegally where she had been tried and

had failed. On the promotion of Dr. Prezza, the case had been taken over by Judge Tabare Sosa, who had asked for an opinion from the public prosecutor's office. The prosecutor Langón Cuñarro had advised submitting the case to the executive authorities under article 3 of the law on obsolescence. Judge Sosa had acted on that advice and the executive authorities had ruled that the case did in fact fall under that law. The judge had then pigeonholed the file, thereby concealing Simon's true identity, in violation of the law and of the Convention on the Rights of the Child.

154. His organization appealed to the Sub-Commission to look into the question of disappeared children as a matter of urgency, so that further disappearances could be prevented and disappeared children could be found and their identity restored.

155. Ms. DUROURE (International League for the Rights and the Liberation of Peoples) said that there were two contradictory elements in the human rights situation. While the United Nations mediation, monitoring and verification of respect for human rights was increasingly important, violations of human rights continued to increase both in number and in scope. Agenda item 17 encompassed most of the questions and problems raised at past sessions and it was unfortunate that an item covering such a vast field had been relegated to the end of the agenda, when time was short.

156. When serious violations became habitual, one was compelled to question the effectiveness of measures to prevent them. Another question was, how was one to promote, protect or restore rights which had never been granted, were not known or had been denied or infringed. It was not enough for fundamental rights and freedoms to be solemnly proclaimed in legislative or constitutional instruments: they needed to be put into practice. That unfortunately had not happened in countries such as Guatemala, El Salvador and Honduras, despite democratic elections, the change from a military régime to a civilian Government and the signature of an important peace accord.

157. It must be recognized once and for all that in the Central American region in particular, a democracy which did not attack the real roots and causes of the armed conflicts which had been raging for many years and did not change the unjust rules regulating the distribution of wealth and political participation, was doomed to failure, especially if, behind the façade of a "democratically elected" Government, the oligarchical and military structures linked in the past with the paramilitary groups responsible for widespread kidnapping and murder persisted.

158. The International League for the Rights and the Liberation of Peoples had welcomed with satisfaction the negotiations in El Salvador and Guatemala which augured well for the future. At the moment, however, there were only agreements defining the various stages to be realized by the opposing parties and United Nations participation. In fact, progress in the peace process had unfortunately gone hand in hand with a significant wave of repression in all its forms. The pressure by the armed forces continued and there was every reason to believe that they would try to block the ongoing process by all possible means.

159. Her comments were not intended as accusations, but rather as an assessment of current events. The instruments necessary for the protection of human rights existed in the context of the United Nations and of national

legislation. The Governments concerned and the United Nations, and indeed everyone - must play their part in monitoring and assistance, keeping a close watch on those situations, and must not be duped by empty façades, by mere declarations of principle or by electoral promises. In that connection she recalled the serious deterioration in the human rights situation in Honduras during the first six months of the new administration, which was further proof of the lack of political will for which no election, however democratic, could be a substitute.

160. Mr. Türk resumed the Chair.

161. Mr. GABRIEL (International Commission of Jurists) said that his organization was concerned that the economic crisis in Latin America had exacerbated the problem of street children - children who could not be supported by their families and were forced into a street life of prostitution and petty crime, often hired by street vendors for drug lords.

162. In Brazil, according to UNICEF, more than 11 million children lived in conditions of absolute poverty and 7 million lived in the streets, fending for themselves. The Brazilian Institute of Social and Economic Analysis had concluded in a recent study that there was a marked presence of organized action for the elimination of street children with a view to cleaning up the streets and luring tourists back. According to Amnesty International, even the police were involved, but the Brazilian Institute stated that, with an ineffective police, security groups had been brought in and the death squads, known as "pest-controllers", had soon multiplied, operating in the slum ghettos (favelas). According to a prominent investigative journalist, death squads killed a child a day and it was estimated that at least 80 per cent of the victims were black or mulatto.

163. As described in the recent report on the first Latin American Conference on the Protection of Street Children held in Argentina in April 1990, for one Brazilian girl, prostitution had meant economic survival. Sent by her mother to the streets at the age of 8 to look for money, she had seen no option but to sell her body, and at the age of 10, and three months pregnant, she had been attacked by police who had stolen her money and repeatedly raped her. In Guatemala, too, an attempt to control street crime had also led to increasing torture and summary execution of street children. In Guatemala City, gangs of street children (Maras) were in fact responsible for high levels of petty crime. Many sniffed glue to distract them from their hunger. Those responsible for the attacks were either national police or members of private security firms operating under licence from the national police or the Ministry of the Interior. In several notable cases in 1990, children under the age of 16 had been kidnapped off the streets by a group of plain clothes armed men driving jeeps with polarized windows. Confidential police photos made available to a child welfare institution clearly showed ears and tongues cut off, and eyes burnt or gouged out. A high percentage of the victims were indigenous.

164. The need to control street crime could never justify torture and summary execution of juveniles. Under the Inter-American Convention for Human Rights and the Convention on the Rights of the Child, minors were not only entitled to the non-derogable fundamental rights such as the right to life and to humane treatment; as minors, they were also, as set out in article 19 of the Inter-American Convention, entitled to benefit from a heightened protection

based on their best interests. Article 4.5 of the Inter-American Convention regarding the Right to Life, and article 37 of the Convention on the Rights of the Child, stipulated that capital punishment for common crimes should not be imposed upon persons who at the time the crime was committed were under 18 years of age, nor on those who were pregnant, let alone children who had not even been charged with a crime. Article 40 of the Convention on the Rights of the Child also stipulated heightened judicial concern for the treatment of juvenile offenders. In addition, it incorporated the Beijing Rules that the deprivation of a juvenile's liberty should be a disposition of last resort and that judicial treatment should be based on rehabilitation and not on punitive measures.

165. The International Commission of Jurists drew attention to States' responsibilities under article 37 of the Convention of the Right of the Child prohibiting torture, cruel, inhuman or degrading treatment or punishment.

166. It urged the Special Rapporteurs on torture and on summary and arbitrary execution to provide greater detail of those practices in their reports to the next session of the Commission on Human Rights.

167. Mr. MAZILU, Special Rapporteur, said that he would like to express thanks to Mr. Ilkahanaf and Mr. Guissé for their efforts to secure his release in the recent difficult years. He had heard that their contribution had been extremely important in a very difficult situation. It had not been easy for them but they had had the courage to take an independent stand and promote respect for human rights.

168. He would never forget, either, the help given to him by Mrs. Bautista who had prepared special analyses on his case.

169. He would like to thank Mr. Eide, Mr. Despouy, Mrs. Daes, Mr. Treat, Mr. Ilkahanaf, Mr. Guissé and Mr. Joinet for their suggestions and proposals concerning his report. He also appreciated the comments and suggestions made by the non-governmental organizations including Pax Christi and he would take them into account.

170. The CHAIRMAN said that the Sub-Commission had thus concluded its consideration of item 17.

171. He recalled that the Sub-Commission had earlier agreed to postpone its consideration of agenda item 12. He suggested, however, that the Sub-Commission should accede to the request of one non-governmental organization which had asked for the floor and then close the discussion.

172. It was so decided.

173. Mr. DONALD (Disabled Peoples' International) said that his organization was clearly disappointed that the report on Human Rights and Disability by the Special Rapporteur, Mr. Despouy, was not ready for presentation at the Sub-Commission's forty-second session. It understood that there were various reasons and had been working diligently with the Special Rapporteur and the Centre for Human Rights to overcome the difficulties. It was particularly grateful to the Special Rapporteur for his many and productive sessions and commended the staff of the Centre for Human Rights on their frank and forthright assessment of the situation.

174. His organization was optimistic that the report would be ready for presentation at the Sub-Commission's forty-third session, because of the substantial progress made with the report, a renewed commitment by the Centre to overcome severe financial difficulties, and the firm support of certain Governments which had demonstrated their continued understanding and constructive support to an admittedly enormous endeavour.

175. His organization also noted with enthusiasm that the Economic and Social Council, at its May 1990 session had set up a working group on human rights and disability. Disabled Peoples' International and the Special Rapporteur had already been in contact with the members of the working group, which would hold sessions during the 1991 session of the Economic and Social Council. It was fortunate that the Special Rapporteur, Disabled Peoples' International and the working group would have ample opportunity for a full exchange of views prior to final completion of the report. He therefore encouraged the Sub-Commission to facilitate the dialogue between the Special Rapporteur and the working group, so that the report could be ready for distribution as a major component of United Nations action during the Decade for Disabled Persons due to end in 1992.

176. Although the final report on human rights and disability would be delayed for one year, Disabled Peoples' International wished to impress upon the Sub-Commission that government obligations to promote and protect the human rights of all persons, including persons with disabilities, were in force and enforceable. Even so, gross violations of human rights that produced disability and gross and systematic violations of the human rights of persons with disabilities continued unabated.

177. Disabled Peoples' International, under its new leader, Mr. Joshua Malinga, and with its newly created post of Executive Director held by Henry Enns, would continue its international vigilance to defend the right of all persons with disabilities.

The summary record of the second part of the meeting appears as document E/CN.4/Sub.2/1990/SR.30/Add.1

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SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND
PROTECTION OF MINORITIES

Forty-second session

SUMMARY RECORD OF THE SECOND PART* OF THE 32nd MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 29 August 1990, at 3 p.m.

Chairman: Mr. TURK

later: Mr. HATANO
Mrs. MBONU

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* The summary record of the first part of the meeting appears as document E/CN.4/Sub.2/1990/SR.32.

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HUMAN RIGHTS AND SCIENTIFIC AND TECHNOLOGICAL DEVELOPMENTS (agenda item 13) (continued) (E/CN.4/Sub.2/1990/7, 12, 37 and Add.1-3)

1. Mr. Hatano took the Chair.

2. Mrs. KSENTINI, commenting on the note she had prepared, pursuant to Sub-Commission decision 1989/108, on a study of the problem of the environment and its relationship to human rights (E/CN.4/Sub.2/1990/12), drew particular attention to a number of topics on which such a study might focus. They included: the effects of violations of human rights on environmental degradation; the acceptable limits of the impact of the exercise of the right to the environment on the enjoyment of other rights; comparative studies of international, regional and national norms to determine the legal foundations of the right to the environment; a study of the duties stemming from the recognition of the right to the environment, including the issue of compensation for victims of the violations of that right; and measures to guarantee respect for human rights in the context of the right to the environment. She stressed that the study about which she had submitted the note should also be planned in conjunction with the United Nations Conference on the Environment and Development scheduled to be held in Brazil in 1992.

3. Mrs. PALLEY said that she hoped that the study of the problem of the environment and its relation to human rights could be discussed rapidly the following year. She then drew attention to document E/CN.4/Sub.2/1990/37/Add.3 which contain the findings of six scientists on the use of chemical weapons in Angola. She recalled that the report of the Secretary-General (A/44/561) had made provision for machinery to enable experts to investigate allegations concerning the use of weapons of that kind; unfortunately that machinery was not yet operative. States refrained from requesting its intervention because they feared that such a request would be judged to be unfriendly by other States. That was what had happened when Iraq had been accused of using chemical weapons against its Kurdish population in 1988. Subsequently, Yugoslavia had been accused of poisoning by the people of Albanian origin in Kosovo. In the previous year, the representative of Angola had stated in the Sub-Commission that his Government would study the allegations concerning the use of chemical weapons and requests for assistance to victims to which its attention had been drawn in the Sub-Commission. Unfortunately, that statement had not been followed up and in the current year no representative of Angola was present. In the past, the Angolan authorities had questioned the competence of one of the experts, whose opinions were reported in document E/CN.4/Sub.2/1990/37/Add.3. She considered that such a procedure, which was sometimes used by Governments in order to deny atrocities, was not convincing. The document in question also contained the opinions of five other experts.

4. Soviet experts were known to have acknowledged that chemical weapons manufactured in their country had been employed for military purposes in Angola, specifying, however, that the weapons in question were merely incendiary bombs. She regretted that the ban on chemical weapons negotiated in the Conference on Disarmament did not extend so far to incendiary and napalm bombs. The Conference on Disarmament should be urged forthwith to include all chemical-based weapons, particularly those that caused serious lesions, and notably incendiary bombs in that ban. In that connection, she referred to reports that the Sri Lankan forces had used incendiary bombs. She concluded it important to extend the ban on chemical weapons and, at the same time, to request humanitarian aid for their victims.

5. Mr. HATANO congratulated Mrs. Ksentini on her note on a study of the problem of the environment and its relation to human rights (E/CN.4/Sub.2/1990/12) which itself was a report. He noted, however, the difficulties inherent in the subject, in theory and in practice. That difficulty was reflected by the questions raised in Mrs. Ksentini's note. For instance, in paragraph 21 she asked: "What position do ecological rights occupy within the hierarchy of human rights standards?". In paragraph 27, she took the view that as human rights might be affected by environmental problems those rights were likely to come into conflict with the requirements of environmental protection.

6. In her note, Mrs. Ksentini had therefore drawn attention to the problem of the hierarchy of human rights posed by the right to the environment. Indeed, the fact that no such hierarchy existed might lead to chaos in the future. Conflicts would inevitably arise among various rights; the question was one which the Sub-Commission should take up as soon as possible. It might be difficult to have a new agenda item to the question, since the Commission was known to be luke-warm about it. However, when the Sub-Commission had completed another item on its agenda, a request might be made for the question of conflicts between human rights to be taken up as the matter of the highest priority. In the meantime, it was desirable that the study of the problem of the environment and its relation to human rights, which was the subject of Mrs. Ksentini's note (E/CN.4/Sub.2/1990/12), should be carried out and that Mrs. Ksentini should be appointed as special rapporteur for that purpose, in view of the very clear awareness she already showed of the problems that would have to be considered.

7. Mr. DESPOUY agreed with other members of the Sub-Commission that the note by Mrs. Ksentini (E/CN.4/Sub.2/1990/12) was first rate. Any study that she undertook would constitute a formidable challenge, but Mrs. Ksentini already showed very clearly the directions which such a study should take. The problems that ought to be considered would unquestionably take on increasing importance in the years ahead; they would be considered comprehensively particularly at the Conference on Environment and Development scheduled to be held in Brazil in 1992.

8. A study of the problem of the environment and its relation to human rights would inevitably go beyond the context of human rights and scientific and technological developments which formed the subject-matter of item 13 currently under consideration, and it would have to encompass other issues. It would therefore be desirable that the future study should come under a separate agenda item, perhaps item 4.

9. Mr. JIN said that he agreed with the approaches taken by Mrs. Ksentini in her note. In particular, he thought it was necessary to determine the "principle or priority issues" as she recommended in paragraph 40 (a). He stressed that at the present time environmental problems in relation to human rights were doubtless more pressing in the developing countries, whether the problems involved were water, desertification, industrial pollution, and so on. Furthermore, there were problems that stemmed from irresponsible initiatives by developed countries, including the dumping of wastes in the developing countries, of which Mrs. Bautista had spoken. The provision of technical and financial assistance not tied to political conditions to the

developing countries by the developed countries was also a very important aspect. Finally, like Mr. Despouy, he thought that the problem of the environment in relation to human rights should be a separate item, perhaps item 4, on the Sub-Commission's agenda.

10. Mr. EIDE said that he considered Mrs. Ksentini's note to be extremely useful. He was in favour of a study of the problem of the environment and its relation to human rights but wished to raise a conceptual issue. He thought that the problem could be addressed in two ways. Either the existence of a right to the environment might be affirmed and defined or it could be affirmed that environment problems hindered the enjoyment of certain established rights stated in the International Bill of Human Rights. The second approach if adopted, might make it possible to avoid problems relating to the hierarchy between human rights of which Mr. Hatano had just spoken. He personally had reservations abut enlarging the current range of human rights.

11. Mr. GUISSE stressed, in connection with the projected study of the problem of the environment and its relation to human rights addressed in the note by Mrs. Ksentini (E/CN.4/Sub.2/1990/12), the seriousness of the problem of toxic waste which destroyed nature and penetrated ground water, thus causing many infections. The study in question should address not only causes of violations of the right to a healthy environment but also their dire consequences for mankind. He associated himself with Mr. Despouy's comments in that regard. Generally speaking, the study envisaged should be sufficiently broad to provide guidance for countries in the quest for a healthy environment. Further, the right to the environment must be based on recognized standards of international law. It would be, as it were, one of solidarity, since rich and poor alike would benefit from it. When industrialized countries dumped wastes, particularly in Africa, it was not just the developing countries that were affected; the pollution would ultimately have repercussions on the industrialized countries as well.

12. Mr. SUESCUN pointed out that the topic discussed in the note by Mrs. Ksentini was a new one. More generally, the right to the environment was a new right. The first thing that needed to be done was to give a basis to that right, which was linked to the right to health, food, water and so on. In footnote 10 of her note, Mrs. Ksentini quoted the Professor Galicki of Poland who had stated: "The right to life and the quality of life depend directly on positive or negative environmental conditions". In preparing the standards that would form the basis for the right to the environment, he hoped that a special place would be given to the organization of the urban and rural environment and in that regard he quoted, as examples, the legal and administrative provisions applied in Switzerland.

13. He drew attention to the differences and convergences between developing countries and industrialized countries in respect of the preservation of natural resources. The industrialized countries had been the first to harm the environment by water pollution, the dumping of toxic or nuclear wastes, etc. Yet, they had also imposed strict controls and today it was the developing countries that had to apply strong measures to protect their resources. In conclusion, he stressed that the right to development was part of the right to life; it was a right that would acquire greater importance in the future. From that standpoint, one should welcome the competence and enthusiasm shown by Mrs. Ksentini in the task she had set herself.

14. Mr. ALFONSO MARTINEZ said that he also wished to congratulate Mrs. Ksentini on the work she had done within a short period of time, pursuant to Sub-Commission decision 1989/108. That work came within the context of the growing concern shown by the United Nations in the environment. In that connection, concepts of responsibility and guarantees in respect of the environment would be taken up in a United Nations Congress on the Prevention of Crime and the Treatment of Offenders which would take place shortly in Havana. Reverting to Mrs. Ksentini's note, he said that it provided much food for thought. He personally attached great importance to the collective nature of the right to development, which could be compared to that of the right to self-determination. It could be said that while the right to self-determination conditioned the other civil and political rights, the right to the environment conditioned economic, social and cultural rights. The enjoyment of that right was particularly vital for health, access to leisure, and so on.

15. In paragraph 33 (c) of her note, Mrs. Ksentini had very properly stressed the rights of indigenous peoples. Those rights were a very important aspect of the problem of the environment and its relation to human rights, in view of the very serious degradation of the environment of those peoples due to industrial pollution, the encroachment of lines of communication, and so on.

16. The direction the projected study should take would certainly emerge from the debate which it would be necessary to have. Note E/CN.4/Sub.2/1990/12 already provided a very good basis for the study of a problem which would warrant a very great deal of attention in the future.

17. Mr. van BOVEN said that he very much appreciated the highly informative note by Mrs. Ksentini. He hoped that the study in question would give rise to a still more thorough debate at the next session. In paragraph 12 of her note, Mrs. Ksentini had stressed that environmental problems and human rights also concerned future generations. He recalled that the Charter of the United Nations took account of succeeding generations and affirmed that the United Nations was established to save them from the scourge of war. However, the United Nations should certainly help to protect them from other threats to their survival.

18. He further commented that the approach to the study of the question of the environment and human rights was generally too anthropocentric. For example, the Declaration on the Right to Development stated that man was at the centre of development. It was desirable to take account of other forms of life on Earth, such as animals; man unquestionably had a supreme role, but that did not authorize him to use the resource of the Earth as he wished. Referring to the comments made by Mr. Alfonso Martínez, he said that he also attached a great deal of importance to the question of the rights of indigenous peoples, mentioned in paragraph 33 of Mrs. Ksentini's note. In conclusion, he wished Mrs. Ksentini every success and looked forward to a fruitful study of the question the following year.

19. Mr. SACHAR also congratulated Mrs. Ksentini on the way in which she had tackled a question which was fairly new, particularly for the developing countries. Noting that Mrs. Ksentini had raised the question of the basis for the right to a healthy environment, he said that in his country, India, a certain number of court verdicts had linked that right to the right to life.

The courts had ruled that activities to combat air or water pollution also protected human life. He mentioned in particular a case concerning the mining of limestone; mining activities had been halted although the consequences had been recourse to expensive imports, in order to protect the health and lives of human beings. Obviously, in many situations, it was no easy task to set a boundary between development needs and the right to a healthy environment; people were, however, increasingly aware that the right to life included the right to live in a healthy environment.

20. Mr. JOINET noted that Mrs. Ksentini asked the Sub-Commission to make suggestions about the priority issues to be selected for a study of the problem of the environment and its relation to human rights. He personally hoped that high priority would be given to the issue of the right to popular participation, mentioned in paragraph 33 (d) of Mrs. Ksentini's note. He looked at the question mainly from three viewpoints: that of the limits, mentioned by Mrs. Ksentini, to be set between the right to the environment and the other rights; that of the role of the non-governmental organizations, which were often the best allies of countries of the South as far as environmental protection was concerned (he mentioned the role played by Greenpeace); and that of the role of the ecologist parties which, for the time being was confined to the countries of the North but was very likely to be extended.

21. Mr. MAXIM said that he had already had occasion to discuss the right to a healthy environment in various forums, including UNDP and the EEC, and recalled the view stated some time ago by an adviser to a former President of the United States of America that, more than the nuclear peril, damage inflicted on the environment constituted the greatest danger to mankind for the future.

22. For more than a decade, UNEP and other organs concerned with the environment had been sending up alarm signals. Vigilence was today more necessary than ever. In her note E/CN.4/Sub.2/1990/12, Mrs. Ksentini assigned particular importance to the role of national legislation in the campaign on behalf of the environment. In that connection, he mentioned his own country which, in the absence of proper legislation, had squandered irreplaceable natural resources. He also underscored the negative role often played by the multinational corporations in the developing countries; the clearing of the Amazonian forest was one such tragic example. There and elsewhere, the resources of developing countries were being destroyed by foreign interest concerned only with their profits.

23. Mrs. BAUTISTA urged Mrs. Ksentini to continue and expand the study which she had undertaken. If Mrs. Ksentini took account of all the suggestions made by the members of the Sub-Commission, her task would be a monumental one. She hoped that in that task, and in the work currently being done to preserve a healthy environment in the interest, not only of the present generation, but also of future ones, stress would be laid on co-operation with the NGOs which were active in that field.

24. Mr. SIMPSON (International Commission of Jurists) recalled that the need for a healthy environment had already been underscored in a large number of international instruments, including the Stockholm Declaration. The General Assembly had recognized that there was an urgent need to increase

environmental activities, in deciding that a World Conference on Environment and Development would be held in Brazil in 1992; it had already identified the main issues to be addressed at that conference. He hoped that it would study the fundamental problem of the relationship between unplanned development, the debt burden and environmental degradation. He hoped that the conference would be eminently practical and that its decisions would be backed up by effective implementation procedures.

25. The dumping of wastes by multinational corporations was one of the most serious forms of environmental damage. Today, in general, insufficient attention was given to the environment in economic decision-making. Indigenous peoples, mentioned in Mrs. Ksentini's note, were particularly affected by that situation. In future the decisions that concerned them, particularly in respect of projects implemented in their territory, should be taken in consultation with them. In conclusion, he wished every success to Mrs. Ksentini in her capacity as special rapporteur, and he requested the Sub-Commission to play an effective role in the projected study of the problem of the environment and its relation to human rights.

26. Mr. LITTMAN (World Union for Progressive Judaism) considered that the large-scale utilization of chemical weapons by Iraq, during the Gulf War and against its own Kurdish population, had inflicted serious damage on the environment and should be considered rapidly by the Commission, the Sub-Commission and other competent bodies. Unfortunately, the decisions of the International Conference on Chemical Weapons, held in Paris in December 1989, had not brought about a change in the behaviour of certain countries which possessed large quantities of chemical weapons; he was thinking of Libya, Iran, the Syrian Arab Republic and Iraq. Iraq, in particular, had in its possession stocks of thousands of tons of chemical weapons, and was conducting research to devise still more sophisticated weapons. That country and certain other Middle Eastern countries sent students abroad to spy on the latest innovations in chemical and bacteriological warfare. In that connection, he referred to an article published in the International Herald Tribune of 3 April 1990, which reported on the threats of chemical warfare made by Iraq against Israel; President Saddam Hussein had backed up those threats by stating that today his country had no need of nuclear weapons since the chemical weapons in its possession would enable it to destroy Israel.

27. Today, after its aggression against Kuwait and its occupation of that country, Iraq was making increasing threats against the growing number of countries that stood in the way of its designs. In view of Iraq's attitude, he would like the Sub-Commission to adopt a resolution condemning Iraq. He would also like it to appoint a special rapporteur to prepare, inter alia, a list of the companies that engaged in trade in toxic substances and of the States that were hesitant to monitor the activities of those societies. Action was needed to prevent a disaster occurring in the Middle East.

28. Mr. GRAVES (International Commission of Health Professionals for Health and Human Rights) said that he also wished to protest against the use of chemical weapons for military purposes, including their use in a national context, against civilian populations, referred to by the previous speaker. He stressed that the NGOs could play an important role in implementing the Convention on the Prohibition of the Development, Protection and Stockpiling

of Bacteriological (Biological) and Toxin Weapons and on Their Destruction, by carrying out investigations on those weapons and reporting to the competent bodies. The NGOs were also in favour of parallel provisions in respect of chemical weapons. In 1989, a committee of scientists for disarmament had been set up which received complaints about the use of chemical weapons. The reports of the committee referred, inter alia, to the use of chemical weapons against civilian populations in Iraq and in Angola, as well as against workers and schoolchildren in Kosovo.

29. A mission in which the International Commission of Health Professionals and Health and Human Rights had participated, together with other NGOs, had visited Kosovo to meet health professionals and persons with symptoms of poisoning by chemical substances. The mission had concluded that the use of chemical substances was undeniable; noting that schoolchildren of Albanian origin had been affected whereas Serbian schoolchildren had not, it had concluded that there was a context of ethnic divergence. His organization therefore requested the Sub-Commission to investigate the cases of poisoning in Kosovo. In the report which it had submitted on the question, it had mentioned the name of Dr. Benedetti of Médecins du Monde by mistake; it therefore wished to make a correction. He welcomed the fact that the Commission on Disarmament had made some progress in defining the use of chemical or bacteriological weapons and expressed the hope that the question would remain on the Sub-Commission's agenda.

30. Mr. Türk resumed the chair.

31. Mrs. MBONU noted that although the Sub-Commission was taking up the question of the environment in the context of human rights for the first time, it had already addressed the issue of the dumping of toxic wastes in the developing countries. Her own country had been a victim of that practice. She would therefore like Mrs. Ksentini to explore the question further: it was true that another body was already dealing with it, but in the Sub-Commission it would have to be approached from the viewpoint of human rights. Generally speaking, it was desirable that the projected study should emphasize those aspects of the problem of the environment that were linked to human rights; at the same time, the study should be conducted in co-operation with other bodies that were concerned with other aspects.

32. Paragraph 40 of Mrs. Ksentini's note (E/CN.4/Sub.2/1990/12) requested the Sub-Commission to determine priority issues. In her view, one such issue was contained in paragraph 33 (c), namely, the rights of indigenous peoples. As a member of the Working Group on Indigenous Populations, she was aware of the extent of their complaints about the pollution of their environment.

33. Mr. ARNOTT (World Conference on Religion and Peace) considered Mrs. Ksentini's note to be an excellent introduction to the projected study. In his view, the core issue of the study was identified in paragraph 23 of the note: what would be the object of ecological rights? He stressed that the duality between man and nature, inherited from past centuries, needed to be overcome. In a communication submitted by it to the Sub-Commission, his organization defended instead the continuity between man and nature which had been brought to the fore by Buddhism and Taoism long ago. That continuity was also supported by many modern scientists, who gave examples to show that the Earth constituted a whole and that an irresponsible act committed in one place had consequences elsewhere.

34. Mr. KAISIEPO (National Aboriginal and Islander Legal Service Secretariat) endorsed the recommendations by Mrs. Ksentini and the comments made earlier on indigenous peoples by the International Commission of Jurists. It was not sufficient, when considering those peoples, to refer to ILO Convention No. 169, since that instrument merely constituted a set of minimum guarantees, regarded as inadequate by most indigenous peoples. One should instead consult the draft declaration on indigenous rights currently being prepared by the Sub-Commission's Working Group on Indigenous Populations; it was desirable that the projected study should take due account of it.

35. He then drew attention to the damage being inflicted on the environment of indigenous peoples in Western Papua. In that territory, the Indonesian Government was encouraging foreign investors by offering concessions to them, without making a proper environmental assessment of the activities of those investors. Copper mining was a regrettable case in point. At the present time, plans were being put into effect to increase copper production and gold production substantially by extending mining concessions by approximately 25,000 km^2. The exploitation of the forests was also going ahead, producing risks of erosion. The effects of the activities of foreign investors in Western Papua had been studied by the World Wildlife Fund. It was time to put a halt to all that reckless exploitation of natural resources, which was infringing the right of indigenous peoples to the enjoyment of their heritage.

36. Mrs. PARKER (Friends of the Earth) said that she had taken cognizance with great interest of Mrs. Ksentini's note (E/CN.4/Sub.2/1990/12) and very much hoped that Mrs. Ksentini would be appointed as the special rapporteur for the study of environment in relation to human rights, a question that had been neglected for too long. The Friends of the Earth had submitted with other NGOs a document on that study (E/CN.4/Sub.2/1990/NGO/13); it had also submitted another document on apartheid and the environment (E/CN.4/Sub.2/1990/NGO/28).

37. After stressing that the right to development should certainly not be interpreted as a blank cheque for displacing populations and polluting their environment, she mentioned the example of the pollution caused by pesticides in Guatemala. That pollution had been reported some time ago by the Sierra Club; since then, there had been little information on the subject, although it might be assumed that the problems continued unabated. The damage caused could affect future generations.

38. Speaking of the right of peoples to control their natural resources, she mentioned the unlawful exploitation of the resources of Tibet by China, in defiance of the Charter of Economic Rights and Duties of States. Considerable deforestation, in particular, was occurring in Tibet, which would affect future generations. To prevent the situation from deteriorating further, the traditional customs and culture of the Tibetan people should be restored. The Dalai Lama had stated that peace and the survival of mankind were threatened by activities conducted without respect for human values. She emphasized the need to draw up clear-cut principles for resolving the problem of the environment, a problem of which there was a growing awareness but which, at the same time, was being aggravated by the persistent activities of destructive forces.

39. Mrs. KSENTINI welcomed the fact that a large number of speakers had made very useful comments on her note E/CN.4/Sub.2/1990/12. She thanked them for

their kind words and would take account of their suggestions. In particular, Mr. Hatano had spoken of the conflicts between human rights standards related to the environment and other rights. The question was fraught with peril, and she wondered about the extent to which she would be able to deal with it; she considered, however, that the Sub-Commission should explore the question more thoroughly. She also agreed with Mr. Despouy on the need to link up the study of the problem of the environment in relation to human rights with the forthcoming United Nations Conference on the Environment and Development, scheduled to be held in Brazil in 1992. Mr. Jin had very properly requested that full priority should be given in the study to the ecological problems of developing countries, which were the most vulnerable.

40. Mr. Eide had mentioned several possible approaches to the study; she was in agreement with him, but had not yet worked out the best approach. Should the point of departure be the right to the environment, from which other rights would stem, or instead existing rights reviewed in the light of the right to the environment? Mr. Alfonso Martínez had wanted the right to the environment to be considered as a cardinal right, whence other rights were derived. Mr. Guissé and Mrs. Mbonu had emphasized the serious question of the dumping of toxic wastes in the developing countries. Mr. Suescun had called for the right to development to be based on the right to life, and had stressed the convergent interests of developing countries and developed countries in respect of the enjoyment of that right.

41. Mr. van Boven had called attention to a paragraph in the note to which she herself attached great importance, namely, paragraph 12 which spoke of the "heritage of future generations". That consideration should be linked up with what the Charter of the United Nations said on the subject of succeeding generations. Mr. Sachar had referred to India's experience in pollution issues, and he had raised the question of the capacity of the developing countries to cope with pollution problems for which they were not always responsible. She agreed with Mr. Joinet about popular participation and the role of the NGOs. Mr. Maxim had stressed national legislations; the question arose, however, of the extent to which it would be possible to review those legislations in the projected report. The work involved would be colossal, but it should nevertheless be attempted. She wished to assure Mrs. Bautista that she was relying very much on the assistance of the NGOs.

42. She wished to thank those NGOs which had taken the floor during the debate. The International Commission of Jurists had stressed the importance of legal procedures; other NGOs had drawn attention to the problems of indigenous peoples. The World Conference on Religion and Peace had called for the archaic dualism between man and nature to be transcended; she agreed with that view, considering that nature should also be protected. She had also noted what had been said about the attitude of indigenous peoples to ILO Convention No. 169. She thanked the Friends of the Earth for its present and past assistance; it was due to that organization that the Sub-Commission had taken up the question of the environment and human rights, and any proposals it made would be welcomed with interest. Finally, she thanked Mrs. Warzazi for the written observations which she had transmitted on note E/CN.4/Sub.2/1990/12.

43. The CHAIRMAN said that the Sub-Commission had concluded its consideration of agenda item 13.

ENCOURAGEMENT OF UNIVERSAL ACCEPTANCE OF HUMAN RIGHTS INSTRUMENTS (agenda item 14) (continued) (E/CN.4/Sub.2/1990/38 and 43; E/CN.4/Sub.2/1990/L.22)

44. Mr. HATANO, reporting on the item, pursuant to Sub-Commission resolution 1988/30, said that he would not revert to the clarifications already given in a statement by the Under-Secretary-General for Human Rights. Commenting instead on recent trends in the universal acceptance of human rights instruments, shown in the note by the Secretary-General (E/CN.4/Sub.2/1990/38), he found it regrettable, first of all, that no additional information had been received from States pursuant to Sub-Commission resolution I B (XXXII) since the Sub-Commission's fortieth session. It was particularly unfortunate as that function of the Sub-Commission was the only means, in the United Nations context, of obtaining information about the problems that impeded universal acceptance of human rights instruments and of taking steps to remedy the situation.

45. The tables appearing in the annex to document E/CN.4/Sub.2/1990/38 showed that between 2 September 1988 and 1 June 1990 there had been 87 ratifications or new accessions to the international instruments listed therein. Five new States had acceded to the International Covenant on Economic, Social and Cultural Rights and to the International Covenant on Civil and Political Rights. Those figures reflected an acceleration in the process of ratification and accession. One must hope that that trend would continue in order to achieve universal acceptance of the instruments.

46. He proposed that the Convention on the Rights of the Child, adopted by the General Assembly on 20 November 1989, should be included in the list of instruments. He went on to emphasize the contribution made by the technical assistance programmes to ratifications and accessions by States; the programmes, comprising mainly expert services, national training courses, and so on were described in document E/CN.4/1990/43. The Sub-Commission should express its appreciation of the advisory services programmes offered by the Centre for Human Rights and should call for them to be further promoted. He would also like the member of the Sub-Commission appointed to report on that item to add a study of the difficulties that prevented States from ratifying and acceding to the information he provided. Moreover, the Sub-Commission should request the Secretary-General, pursuant to its resolution 1988/30, to inform it of the discussions held by him with delegations on that question.

47. The Sub-Commission should renew the invitation addressed to Member States to present information, making particular reference to the instruments to which they were not yet parties and the instruments which they had signed but not yet ratified. The Secretary-General should also be requested to continue holding informal discussions with government delegations concerning prospects for the ratification of human rights instruments on the occasion, for example, of the sessions of the General Assembly and the Commission on Human Rights. Those were some of the proposals made in draft resolution E/CN.4/Sub.2/1990/L.22, of which he was a sponsor. He hoped that the draft resolution would be adopted.

48. Mr. EIDE said that he was also a sponsor of draft resolution E/CN.4/Sub.2/1990/L.22. He wished to emphasize that the necessity for universal acceptance of international instruments for the protection and promotion of those rights should now be looked at from the viewpoint of a situation which had evolved. In the past, the acceptance of instruments had

been inhibited by ideological problems that had by and large disappeared. Nowadays, in meetings of experts on human rights, it was virtually impossible to tell where a particular expert came from. States which had thus far shown reluctance should take account of that evolution and of the extensive dialogue already under way between human rights bodies and States which was helping to resolve problems rapidly, before they became worse.

49. Mr. FLINTERMAN thanked Mr. Hatano first of all for his lucid analysis of the current situation vis-à-vis the universal acceptance of human rights instruments. Like Mr. Hatano, he would like the Convention on the Rights of the Child to be included in the list of instruments in document E/CN.4/Sub.2/1990/38. Some thought might also be given to including the Second Optional Protocol to the International Covenant on Civil and Political Rights; that instrument, which dealt with the abolition of the death penalty, had been adopted at the previous session of the General Assembly.

50. Mr. DESPOUY stressed that the progressive entry into force of international instruments and their implementation by means of monitoring bodies had already considerably enhanced the international protection of human rights. Like Mr. Hatano, he thought that the advisory services made available to States also played a very constructive role. Similarly, on the basis of his own experience, he also wished to draw attention to the role of national agencies in securing accession and ratification by States. In various Latin American countries, such as Ecuador, Paraguay or Peru, there were entities of that kind, in the form of presidential commissions, advisory boards, and so on. They had played an important role in persuading Governments to ratify or to accede to the instruments. Mention should also be made of the role, at the national level, of political and trade union organizations and various non-governmental organizations, which had helped to explain about those instruments, develop an awareness of them and thus promote ratifications and accessions.

51. Mr. ALFONSO MARTINEZ said that he considered the recent developments in respect of the universal acceptance of the human rights instruments which were reported in document E/CN.4/Sub.2/1990/38 to be very interesting. In the list of instruments contained in the annex to that document, other than the United Nations instruments, the Protocols additional to the Geneva Conventions of 1949, shown in paragraph 12, were highly significant. However, there were many more international human rights instruments than those appearing in the annex. He would like some of those instruments, mainly those of a social character, such as the Convention against Discrimination in Education, adopted by UNESCO in 1960, to be included in that list.

52. There were several ILO Conventions that might be included in the list of instruments in document E/CN.4/Sub.2/1990/38, including Convention No. 29 concerning Forced or Compulsory Labour, Convention No. 105 concerning the Abolition of Forced Labour, and Conventions Nos. 97 and 98 concerning trade union rights. The Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity might also be included in the list. He would like those other instruments to be mentioned in draft resolution E/CN.4/Sub.2/1990/L.22 in operative paragraph 1 which requested the inclusion of the Convention on the Rights of the Child.

53. Mr. ILKAHANAF thanked Mr. Hatano for his concise report. He agreed with him about the influence of the advisory services on Governments. The NGOs

also had a major influence on Governments, mainly because, in their reports, they stated which Governments had acceded to or ratified international instruments and those which had not done so. It would also be very worth while to co-operate with the NGOs in drafting future reports on the universal acceptance of human rights instruments.

54. Mrs. KSENTINI also thanked Mr. Hatano for his oral report. She was aware of the difficulty presented by that report, because she had presented it the previous year. She believed that the study of the encouragement of universal acceptance of human rights instruments should give consideration not only to international methods of persuading Governments but also to national ones of publicizing the instruments. She agreed with Mr. Alfonso Martínez on the need to review and update the list of instruments, notably by including ILO and UNESCO Conventions. In addition to the information on ratifications and accessions found in the annex to document E/CN.4/Sub.2/1990/38, there should be a list of those countries that had agreed to special procedures. Algeria, for example, as indicated in the annex, had ratified instruments, but it had also agreed to all the procedures concerning the presentation of communications, including the procedures concerning allegations. Further, it had not entered any reservation in respect of the Convention against Torture. It would be worth while to refer in that way to the arrangements made by Governments that ratified international instruments.

55. Mr. TEITELBAUM (International League for the Rights and the Liberation of Peoples) said that his organization supported the Sub-Commission in its efforts to secure universal acceptance of human rights instruments. It was true that sometimes Governments that ratified instruments did not apply them, whereas others that had not done so showed greater respect for their provisions; that paradox should not, however, be used as an excuse. It was most regrettable that some instruments had not won greater universality. He was thinking in particular of the International Covenant on Civil and Political Rights, ratified by 89 States only on 1 January 1990 and of the International Covenant on Economic, Social and Cultural Rights, ratified by 94 States only on that date. It was clear that those instruments adopted, however, in 1966, were still far from universal. Some of the objections were well known, including the one to the effect that some insufficiently developed States were unable to guarantee the rights set forth in the International Covenant on Economic, Social and Cultural Rights; it should be borne in mind, however, that that instrument itself anticipated a gradual implementation.

56. The International League for the Rights and the Liberation of Peoples had already indicated its concern at the small number of ratifications of the Protocols additional to the Geneva Convention of 1949. It would like a minimum number of rights to be recognized to combatants and to civilian populations in armed conflicts. Unfortunately, although the Additional Protocols adopted in 1977 had extended the scope of the Conventions, they themselves had been much less universal. Whereas on 1 January 1990 there had been 165 accessions to the Geneva Conventions of 1949, there had been only 92 to Protocol I and 82 to Protocol II. It was absolutely vital to improve that situation in the context of threatened conflicts and actual conflicts.

57. Mr. HATANO said that while he appreciated the comments and suggestions that had followed his oral report on item 14, he would hardly be in a position to follow them up since his term as Rapporteur was drawing to a close. He had already thought of including in the list of international instruments a number of other instruments such as the Second Optional Protocol to the International

Covenant on Civil and Political Rights and ILO Convention No. 169; however, he had encountered some opposition to that course in his contacts with members of the Sub-Commission. There was, in fact, some reluctance to open the door to other instruments, since it would mean that many others would have to be admitted later. He agreed with Mr. Ilkahanaf about the co-operation of the NGOs. If the Sub-Commission wished to keep the item on its agenda, it could appoint a special rapporteur who would have more time to explore the issue.

58. The CHAIRMAN said that the Sub-Commission had thus concluded its consideration of agenda item 14.

DISCRIMINATION AGAINST INDIGENOUS PEOPLES (agenda item 15)
(E/CN.4/Sub.2/1990/39, 41 and 42; E/CN.4/Sub.2/1990/L.44, 50 and 53)

59. Mrs. DAES, Chairman/Rapporteur, Working Group on Indigenous Populations, introduced the report of that body on its eighth session (E/CN.4/Sub.2/1990/42). She first thanked Mrs. Mbonu and Mr. Alfonso Martínez, Mr. Hatano and Mr. Türk for the contributions they had made to the work of the Group, and the members of the Secretariat, particularly Mr. Keliau, for their assistance. She also thanked observer Governments and representatives of indigenous peoples for their oral and written statements.

60. She drew attention to the structure of the report, which contained five chapters and to the decisions and recommendations which appeared in the annex, stating that all the text had been adopted unanimously. The annex also contained three reports drafted respectively by Mr. Alfonso Martínez, Mr. Türk and herself. Generally speaking, the dialogue with representatives of indigenous peoples and Governments had taken place in good conditions, although a number of meetings of the drafting groups had been without interpretation; however, Mr. Keilau had arranged for interpretation services for certain other meetings.

61. Indigenous peoples and communities had sent 450 representatives and there had been 13 Government observers. The ILO and a number of non-governmental organizations had also attended. The Minister for Aboriginal Affairs of Australia had addressed the Working Group and contributed constructively to its activities. The USSR had been represented for the first time by a member of the Supreme Soviet's Subcommission on the Problems of the Small Peoples of the USSR. She also thanked the United States of America for its participation. She thanked New Zealand for sending a high-level delegation.

62. For the first time, drafting groups had been set up; they had played a very constructive role. The participation of the indigenous representatives within those groups and the Working Group had also been very constructive and peaceable. Generally speaking, indigenous peoples were peaceable and anxious to contribute to the economic and social development of their country. She hoped that there would be greater participation by Governments and said that she would not for the moment comment on the recommendations and decisions of the Working Group on Indigenous Populations, preferring to wait until the substance of the texts was incorporated into draft resolutions.

63. Mr. HATANO said that he had enjoyed working with Mrs. Daes in the Working Group on Indigenous Populations; he recalled that the Group was endeavouring to finalize a draft universal declaration on the rights of indigenous peoples

to be adopted for the year of indigenous peoples, scheduled for 1993. There remained two main issues on which the Working Group should receive precise instructions from the Sub-Commission.

64. First, there was the problem of a definition of indigenous peoples, as requested by the Commission. The definition should be clear, but could also be restrictive and exclude certain populations. Second, the extent to which the draft declaration could be progressive should be made clear. It had been noted that there had been more representatives of indigenous peoples than government observers at the previous session of the Working Group. The draft declaration appearing in report E/CN.4/Sub.2/1990/42 therefore tended to reflect the opinion of those representatives. That was desirable and even essential, but the report would also have to be approved by the Commission, followed by the Economic and Social Council and then by the General Assembly. Those three organs were made up of government representatives. An over-ambitious text might not therefore be approved by those bodies. The choice therefore lay between the submission of the revised current text, which might incur the disapproval of the parent bodies, or of a text that had been toned down and which would be acceptable to most, if not all, Governments.

65. He drew attention, in that regard, to General Assembly resolution 41/120, of 4 December 1986, in which the Assembly had invited bodies engaged in developing instruments in the field of human rights to bear in mind certain guidelines: consistency with the existing body of international human rights law, the dignity and worth of the human person, precision sufficient to give rise to practicable rights, implementation machinery and broad international support. The Working Group was required to respect those guidelines. He wondered whether in the current text the deletion of the word "existing" before "body of international law", was consistent with the first of those guidelines, whether the precision of that text was consistent with the third guideline and whether the international support anticipated was consistent with the fifth guideline.

66. Obviously he did not wish the concerns he had just expressed to have a dissuasive effect on the Working Group, indeed, he was available to the Working Group and the Sub-Commission to assist in working out a text best suited to the interest of indigenous people.

67. Mrs. MBONU, referring to her working paper on an international year for indigenous rights, recalled that, in its resolution 1989/36, the Sub-Commission had entrusted Mr. Eide and herself with the task of proposing activities for such an international year. The Sub-Commission was known to have been in favour of the idea since 1987. Subsequently, parent bodies had hesitated about the choice of year. Some representatives of indigenous peoples had a preference for the year 1992, which would be the five hundredth anniversary of the beginning of the colonization of the Americas by Europeans; other representatives of those peoples did not support that choice. The Sub-Commission had proposed 1992 and, as a further option, 1993; obviously, the General Assembly would be called upon to make the final decision. With Mr. Eide, she had worked out a draft programme of activities in document E/CN.4/Sub.2/1990/41, drawing on the experience gained from other international years; she hoped that the Sub-Commission would approve the draft programme.

68. An international year for indigenous rights could do much to promote the exercise of those rights. It ought to provide an opportunity for indigenous peoples, Governments and United Nations bodies to work together in order to achieve the progress needed to meet the crucial needs of indigenous peoples. Such an international year should underscore development at the same time as human rights. She was particularly grateful to the indigenous representatives for the useful information on which Mr. Eide and herself had been able to draw in their working paper.

69. Mr. GUISSE congratulated Mrs. Daes on her report E/CN.4/Sub.2/1990/42, which was very comprehensive and informative. In particular, he appreciated the fact that the report based itself on co-operation with NGOs and which, in his view, was highly desirable. He wished, however, to underscore the need for a precise definition of indigenous peoples to enable them to be protected effectively by legal standards. In order to formulate such a definition, it would be necessary to draw on a variety of sources since, in addition to legal knowledge, anthropological, sociological and other expertise were required. It was true that indigenous peoples were already protected by the universal rights proclaimed in the Universal Declaration of Human Rights, the Covenants, and so on; what was needed was to guarantee them additional special rights. Those rights were not, however, without obligations, since otherwise indigenous persons would be unable to integrate into society.

70. The working paper by Mrs. Mbonu and Mr. Eide on an international year for indigenous rights (E/CN.4/Sub.2/1990/41) was equally satisfactory. He hoped that indigenous populations would become actively involved in making their year a success; he also hoped that there would be active involvement by all the NGOs concerned.

71. Mr. JOINET regretted that the Sub-Commission's very heavy workload had prevented him from closely following the activities of the Working Group on Indigenous Populations. Being acquainted with the work performed in the past by Mrs. Daes, he had every confidence in her. As to Mrs. Mbonu, who had just introduced a working paper on an international year for indigenous rights, he remembered the helpful proposals she had made in the past on that issue. He had personally been involved in a controversy which he found regrettable on the choice for the international year of the five hundredth anniversary of the discovery of the Americas by Europeans; he was gratified that, transcending such controversies, constructive decisions were possible, with the agreement of all.

72. Mrs. KSENTINI said that she also had not been able to follow closely the activities of the Working Group on Indigenous Populations, but very much appreciated the contribution made once again by Mrs. Daes. She also considered the working paper by Mrs. Mbonu and Mr. Eide on an international year for indigenous rights to be useful. She hoped that the recommendations made in that document would lead to formal proposals within a short time.

73. Mr. CONDORI (Indian Council of South America) thanked the Working Group on Indigenous Populations, and in particular Mrs. Daes, for their work on behalf of indigenous peoples. Unfortunately, the indigenous peoples were not sufficiently aware of those activities. He spoke of the situation of rural youth in Bolivia, suffering from centuries-old discrimination. He welcomed the fact that the Universal Declaration of Human Rights had been translated into a language spoken extensively by the rural populations of Bolivia. However, the low level of school attendance of the rural populations made it

difficult for them to understand the Universal Declaration of Human Rights. A simplified text had been composed for them by an NGO, World Association for the School as an Instrument of Peace.

74. At the local level, his organization was making a great effort to promote awareness. Two of its leaders had been invited in 1986 to the seminar on ideology and philosophy of Indianism, organized in Argentina by the Indian Council of South America. He stressed that the purpose of the promotion of awareness among the rural population and their introduction to human rights should be to enable persons belonging to those populations to cope with the discrimination they encountered when they went to the towns.

75. Ms. VENNE (International Organization for the Elimination of All Forms of Racial Discrimination) said that she was a Cri Indian from Western Canada. She considered the provisions adopted by the United Nations against racial discrimination to be among the most constructive and forward-looking measures in the field of human rights. Action to combat racial discrimination should be associated with activities in support of the right of peoples to self-determination and to the enjoyment of their resources. In that connection, the concepts of "people" and of "nation" needed to be clarified; all too often they were interchangeable in the media, and even in certain United Nations bodies. The relevant international instruments were precise and even meticulous in that regard: it was not States or Governments, but peoples and nations that were entitled to self-determination. States were required to implement that right within their jurisdiction, whether that jurisdiction encompassed one or several nations. When States failed to consult the peoples over whom they exercised jurisdiction and violated the right of those peoples to self-determination, the international community must take action to enforce that right, particularly if peace and security were at stake.

76. From that standpoint, infringements of the rights of indigenous peoples stemmed from racist ideologies, which wrongfully invoked concepts of integration or national security to give dominant groups an advantage in their intrigues against indigenous communities, particularly in connection with the land belonging to those communities. The political and environmental cost of such activities was well known.

77. Mr. DEER (International Work Group for Indigenous Affairs) thanked the Sub-Commission for efforts it was making to resolve the dispute between the Mohawks and the Canadian authorities in Quebec. The Sub-Commission had already achieved results, as had the Working Group on Indigenous Populations and the Secretary-General of the United Nations, in their contacts with the Canadian Government. He could not speak directly as a representative of the Mohawks in the present situation, but he could reflect their point of view in the Sub-Commission. He wished to draw the Sub-Commission's attention to the serious difficulties which the current crisis was causing for the Mohawks: in particular, they had received almost no food from the outside for several days.

78. The very seriousness of that situation should serve as an example of the fate of indigenous peoples and the conflicts with which they were threatened. In the present situation, two Governments were at loggerheads; each had its population and its culture, and each claimed rights over the same territory. The dispute should be settled by negotiation, in accordance with the relevant international standards. The Mohawks had indicated their willingness to make concessions, in the interests of the negotiations. They had relinquished the

idea of having foreign observers come and of having access to foodstuffs from the outside. Canada, which had often been in the forefront of human rights issues, had certainly lost stature in the weeks that the conflict had lasted. However, the Mohawks were persevering with peaceful negotiations, although the Canadian army was close by. In that context, he was particularly grateful for the assistance extended by the International Federation of Human Rights.

79. Ms. YAZZIE (International Treaty Council), after stating that she was a Navajo from Arizona, in the United States of America, denounced the legislation adopted by the United States Congress to take over Navajo land. Without their land, the Navajos were impoverished. Forcible resettlement broke up their families and forced them to lead a rootless existence in the towns. Alcoholism and suicide were frequent among them. Navajos were not asking for pity, but simply to keep their land, as was the wish of all human communities. Over the past year, the situation had deteriorated; that was why she requested the Sub-Commission to make a first-hand investigation. The situation exemplified the problems of resettlement of indigenous persons that were occurring in many countries.

80. The International Indian Treaty Council supported the work being done by the Working Group on Indigenous Populations with a view to the preparation of a universal declaration on the rights of indigenous peoples; the Council also requested it to continue to react to developments that affected indigenous peoples, for whom the Working Group offered a glimmer of hope. It would be desirable for the Sub-Commission to adopt all the Working Group's recommendations. Although she had not had enough time to study the report by Mrs. Daes (E/CN.4/Sub.2/1990/42), she wished to express her gratitude to her.

81. Mr. EIDE said that he had been very favourably impressed by the results achieved over the years by the Working Group on Indigenous Populations. The high level of participation in its activities and the importance of the ministerial delegations reflected its very significant role. The Working Group had succeeded in involving groups which so far had been deprived of an international forum, after having been marginalized by intruders and colonizers. The results achieved by the Working Group were also due to the flexibility of its methods. At its inception, he had been its first Chairman; he was deeply impressed by the way in which Mrs. Daes had guided it since that time.

82. Mr. Hatano had made some comments which were certainly important; however, the process of elaborating a declaration on the rights of indigenous peoples constituted an entire process. In that process, representatives of the indigenous peoples and Governments could state their points of view; Governments had not availed themselves of all the opportunities offered to them so far, but they could be expected to do so to a greater extent in the future. Their comments would be received on the draft declaration, before the Sub-Commission adopted it.

83. His attitude to the question of definition was one of caution. Attempts to formulate a definition too quickly might hold up the work. It would be necessary to wait until the constitutive components of the future declaration had become clear. Those components would identify the beneficiaries of the rights set forth in the declaration. The beneficiaries would emerge when the text was studied in its entirety. Needless to say, the text should be acceptable to all, but one might hope that Governments would show themselves to be more open, since some already demonstrated greater awareness.

Naturally, there were bound to be unrealistic components which would have to be toned down in the process of preparing the draft declaration. He hoped for a successful continuation of that process, under the enlightened guidance of Mrs. Daes and with the support of the competent members of the Working Group.

84. Mr. KAISIEPO (National Aboriginal and Islander Legal Service Secretariat) thanked the Working Group on Indigenous Populations and Mrs. Daes, its Chairman/Rapporteur, for their efforts to draw up a draft declaration on the rights of indigenous peoples. He particularly appreciated the reference to the right to self-determination that appeared in the draft; that right was fundamental.

85. In Western Papua, the right of the indigenous peoples to self-determination was being flouted by the Indonesian authorities. Those authorities had outlawed the OPM, an organization which defended the interests of the indigenous people. The Indonesian Army had carried out operations against the OPM which had caused heavy loss of life. The Indonesian military had pursued their operations on the territory of Papua New Guinea, an independent country. The authorities of that country had stated that they would expel non-nationals currently in their country, but the operations conducted also affected their own nationals. Thousands of villagers had already had to flee into the jungle. The principles of a declaration on the rights of indigenous peoples, if adopted, would enable that situation to be resolved. He therefore requested the Working Group on Indigenous Populations to pursue its task vigorously.

86. Mr. BARSH (Four Directions Council), after expressing his support for the Working Group and for Mrs. Daes with regard to the preparation of a draft declaration on the rights of indigenous populations, commented on a number of salient features of the recommendations of the Working Group submitted at that session. First of all, he noted the good results yielded by the Working Group's new procedure of having three informal drafting groups. That allowed the representatives of indigenous populations and Governments, as the real parties to the discussions, to work together. Participation by Governments had been more limited than had been hoped, those delegations that had come had shown an open-mindedness that had confirmed that the procedure was the right one. Those delegations had begun a useful dialogue; one must hope that other Governments would follow their example.

87. Commenting on certain observations made by members of the Sub-Commission, he reminded Mr. Hatano that, in its resolution 1988/18, the Sub-Commission had already noted the conformity of the draft resolution on the rights of indigenous populations with General Assembly resolution 41/120. Moreover, like Mr. Eide, he considered that it was better to wait before formulating a definition of indigenous peoples; otherwise the work might well be held up.

88. Reverting to the draft resolutions submitted under agenda item 15, he noted that draft resolution E/CN.4/Sub.2/1990/L.50 concerned the implementation of the recommendations of the 1989 seminar on the economic and social relations between indigenous peoples and States. The text focused mainly on United Nations activities on behalf of the environment of indigenous peoples. It should be stressed that the mobilization of economic and technical co-operation programmes to secure the enjoyment of the social and economic rights of indigenous peoples was an objective on which Governments and indigenous peoples should reach agreement and which should have a more

important place in the Working Group's activities. Draft resolution E/CN.4/Sub.2/1990/L.44 addressed the protection of traditional forms of intellectual property, in accordance with the principles formulated by UNESCO; that was certainly an objective which aimed at defending the culture of indigenous peoples. The purpose of draft resolution E/CN.4/Sub.2/1990/L.53 was to transmit to the Commission and, ultimately, to the General Assembly the working paper by Mrs. Mbonu and Mr. Eide on the international year for indigenous rights (E/CN.4/Sub.2/1990/41). It was a practical document which could have favourable repercussions for indigenous peoples.

89. He found events which had occurred that same day in Canada disappointing, in that they showed that the Canadian Government was not equal to the commitment it had made vis-à-vis the Sub-Commission. He had hoped that instead Canada would give an example. Nevertheless, the Sub-Commission should not abandon its quest for a role in emergency situations. In such situations, it should act more firmly; the current experience in Canada should be taken into account when the Sub-Commission next discussed the question of enhancing its efficiency.

90. Mr. BARKER (Observer for Australia) thought that it should be possible to consider the human rights record of all countries. For its part, the Australian Government was taking strong action to correct the inequalities from which the Aboriginals of Australia continued to suffer. The Aboriginal and Torres Strait Islander Commission had been set up in 1989 with a view to promoting their self-determination and the management of their affairs through elected representatives, as well as a planned development genuinely suited to the needs of local communities. The Commission had entered into negotiations of unprecedented scope with the Aboriginals and the Torres Strait islanders. An amount of $A 452 million had been allocated to fund those activities. His Government was aware that the indigenous populations of Australia continued to be liable to severe disadvantages, but it was seeking to resolve the problem, mainly through the Commission, by achieving the necessary social and political consensus. Moreover, the Government had already adopted, but not yet financed, strategies for the health and education of Aboriginals and Torres Strait islanders. He could give details in that regard to members of the Sub-Commission if they so desired.

91. The death in prison of Aboriginals and Torres Strait islanders was a national tragedy. In 1987, a Royal Commission had been appointed to investigate; in 1988 it had presented its recommendations, which had been approved in February 1989. Its final report would be presented at the end of 1990.

92. In conclusion, he gave an assurance that the Ministry of Aboriginal Affairs would continue to be associated with the preparation of the draft declaration on the rights of indigenous peoples, and to negotiate within the purview of the Working Group's sessions. The Ministry accepted and encouraged the active participation of the NGOs in that process, although it was not always in agreement with their interpretation of certain events.

93. Mr. BLACK (Indigenous World Association) spoke of the activities of the Council of Sioux Nations, which was struggling above all to safeguard the lands of those various nations. The Council had been set up in 1886 to monitor the application of a treaty concluded in 1868 with the Government of the United States of America and which the Government had not subsequently

respected. Today, the fate of the Sioux nations in the United States of America could be compared to that of the populations of other countries dominated by the United States; it could be said that the situation was virtually one of dictatorship. However, the Sioux were religious people, certainly anxious to protect their values against those who threatened them, but who preferred diplomacy to violence. Unfortunately the measures they had taken to preserve their land vis-à-vis the Bureau of Indian Affairs, the State Department in Washington, the Supreme Court, Congress, and so on, had been in vain. That was why they were obliged to approach the United Nations in order to make their situation known and to redress it. They hoped that the initiative would have a success that would sanction the struggle waged in the past by their ancestors and their chiefs and which must continue in the interest of their children.

94. Mr. HYNES (Observer for Canada) recalled that many indigenous communities were among the most vulnerable ones. Aware of that situation, Canada had unfailingly supported the efforts of the Working Group on Indigenous Populations, and particularly those of Mrs. Daes. For Canada, the Sub-Commission's current session had coincided with an unprecedented situation created by the conflict with the Mohawks of Quebec. During the session, the Canadian authorities had been in contact with the Sub-Commission, with Mrs. Daes and with the Under-Secretary-General for Human Rights, Mr. Martensen, on that issue. He thanked the Chairman of the Sub-Commission and his colleagues for the role they had played.

95. He did not have the time to explain in detail his Government's policy vis-à-vis the indigenous populations, but drew the attention of the Sub-Commission to a statement which the Prime Minister of Canada, Mr. Mulroney, had made on the previous day. Mr. Mulroney had referred to the efforts made by Canada in recent years; $4 billion were spent annually on programmes for indigenous peoples; 70 per cent of those programmes were administered by the indigenous communities themselves; negotiations were under way with more than 160 such communities; in matters of land, the agreements concluded with the indigenous communities allocated to them an area greater than that of the four Atlantic provinces of Canada.

96. To be sure, there were claims made by indigenous persons which were not yet satisfied. That was the case of the claims of the Mohawks of Quebec. Yet, both Canadian and Quebec authorities had shown patience and moderation, and had done their utmost to ensure that a peaceful situation prevailed. The statement to which he had referred contained an appeal by the Prime Minister to the Mohawk people; he hoped that the appeal would be heeded. The Canadian Government, faithful to democratic principles and to legality, would continue its efforts to achieve a peaceful solution. Further, it would continue to take an active part in the activities being undertaken within the Working Group on Indigenous Populations and other United Nations bodies involved with those populations.

97. Mr. ALFONSO MARTINEZ recalled that he had been a member of the Working Group on Indigenous Populations for a number of years. During that time, he had been able to observe the competence and devotion of the Chairman/Rapporteur of the Working Group, Mrs. Daes. At the beginning, the Working Group had had a difficult task, but today it had made considerable progress and was at an important point in its history. In the current year, there had been marked progress in particular in the preparation of the draft declaration on the rights of indigenous peoples (E/CN.4/Sub.2/1990/39), which

the Sub-Commission would be required to approve in order to transmit it afterwards to the Commission, the Economic and Social Council and the General Assembly. The arrangement whereby three drafting groups worked on the principles of that declaration had proved to be sound. The indigenous peoples had participated massively in the work of the drafting groups.

98. The participation by Governments, however, had been more limited. It was understandable that some Governments might prefer to await a later stage before making known their criteria and positions. However, now that the results of the work of the three drafting groups were available, the Governments concerned must be urged to co-operate as much as possible. Indeed, what was needed was the active participation of those Governments. Without it, as Mr. Hatano had noted, the draft declaration could not be realistic. He therefore hoped that the tripartite negotiations begun at the current session, which had enjoyed the support of a certain number of government delegations, would extend with the same methodology, to other Governments.

99. Mrs. GALVIS (Observer for Colombia) said that her country would state its viewpoint subsequently in greater detail on the problems arising from the declaration on indigenous rights, notably in the Commission on Human Rights. For the time being, her Government, while stating its reservations on certain concepts in the draft declaration, including those concerning self-determination and collective ownership, supported the efforts to elaborate that instrument. Moreover, Colombia had submitted, together with Nigeria and Mexico, a draft resolution aiming at selecting 1993 as the international year for indigenous rights.

100. Reverting, with the agreement of the Sub-Commission, to item 16 and more particularly to the report of the Working Group on Contemporary Forms of Slavery (E/CN.4/Sub.2/1990/44), she pointed out that there was a gulf between the objectives of international instruments intended to protect children and their lack of effectiveness in practice, at a time when the exploitation of children was becoming more serious. In order to help bridge that gap, and basing herself on situations with which she was familiar in her own country, she considered that some thought should be given to the concept of authority within the family. The family was often the source of the ill-treatment inflicted on children. The concept of an autonomous base in which to develop the abilities of young people should also be considered.

101. Mrs. DAES, Chairman/Rapporteur of the Working Group on Indigenous Populations, making concluding remarks after the debate on the report of the Working Group, recalled first of all that the Universal Declaration of Human Rights referred to the need to protect human rights by legality in order to avoid recourse to rebellion against tyranny. The Sub-Commission had been guided by that concept, initially in its study on indigenous populations, and afterwards in the establishment of the Working Group, whose foundations had been laid by Mr. Eide as its first Chairman.

102. She had to say that she was frankly surprised by Mr. Hatano's comments on the draft declaration on the rights of indigenous peoples. She had submitted the texts relating to that draft in advance to Mr. Hatano, who had not raised any objection prior to the current debate. Further, the comments that he had made in the course of the debate should have been made in 1985, at the time when the Working Group had been considering the relevant Economic and Social Council and General Assembly resolutions. Mr. Hatano, was entitled to have

different opinions, but that should not cause him to revert to matters already agreed by the General Assembly and the Economic and Social Council. Each year the Working Group referred to resolutions by those two bodies. She would revert to the question at the time when the draft resolutions proposed by the Working Group were under consideration and when she would also be able to comment on the excellent working paper by Mrs. Mbonu and Mr. Eide (E/CN.4/Sub.2/1990/41), which was also the subject of a draft resolution.

103. She also agreed with the viewpoint expressed by Mr. Eide and by the Four Directions Council that it would be premature at the current stage to attempt to finalize a definition of indigenous populations. She recalled that a working definition already appeared in the study made by the Special Rapporteur on the question; that definition would obviously be completed in the future.

104. Mr. Joinet and Mrs. Ksentini had offered her encouragement for which she thanked them. She also thanked the representatives of indigenous organizations for their sizeable contribution, and assured them that their suggestions would be taken into consideration. More generally, she thanked all those who had participated in the discussions of the Working Group on Indigenous Populations and assured them that the Group's task would be pursued; it would be impossible to turn back. To be sure, there were terms or concepts that needed further elaboration; the Working Group would study them democratically, in order to improve them.

105. The draft resolution by which the report of the Working Group was to be transmitted invited, inter alia, Governments, indigenous peoples and intergovernmental and non-governmental organizations to study the annexes to the report which contained the draft declaration on the rights of indigenous peoples and the reports of the sessional drafting groups. She expressed her gratitude to the Under-Secretary-General for Human Rights, Mr. Martensen, for publishing a Human Rights Bulletin, No. 9, on the rights of indigenous peoples. She also thanked the Centre for Human Rights and the secretariat of the Sub-Commission for the services they had rendered to the representatives of indigenous organizations.

106. Mrs. MBONU, submitting concluding remarks on the working paper (E/CN.4/Sub.2/1990/41) which she had submitted with Mr. Eide, thanked the members of the Sub-Commission who had spoken about the paper, particularly Mrs. Ksentini, Mr. Guissé and Mr. Joinet. She also particularly thanked the Four Directions Council for its comments. The observer for Colombia had already referred to a draft resolution by Colombia, Mexico and Nigeria on the international year for indigenous rights. Finally, she thanked Mrs. Daes for approving the working paper which she had submitted with Mr. Eide.

107. Mr. HATANO said that he feared that Mrs. Daes had misunderstood the statement he had made earlier. That was why he wished to explain that he approved all the texts appearing in the report of the Working Group on Indigenous Populations (E/CN.4/Sub.2/1990/42) and had no objection to any of them. In the second place, he was well aware of what had happened in 1985; his remarks had been intended for NGOs which might not know what had happened. Moreover, the draft declaration on the rights of indigenous peoples had been amended since that date. In the last resort, the instructions of the General Assembly, rather than those of the Working Group or the Sub-Commission, would have to be followed. He would do his utmost to co-operate in finalizing a good text for the draft declaration.

108. The CHAIRMAN said that the Sub-Commission had thus concluded its consideration of agenda item 15.

CONTEMPORARY FORMS OF SLAVERY (agenda item 16) (E/CN.4/Sub.2/1990/39, 42 and 44)

109. Mrs. KSENTINI, Chairman/Rapporteur of the Working Group on Contemporary Forms of Slavery, introduced the report of the Working Group (E/CN.4/Sub.2/1990/44). She drew attention to the constructive dialogue which had taken place in the Group, in the organization of its work and its deliberations. The Working Group had met from 3 to 23 August, and its report had been adopted by consensus. It had been attended by Mr. Diaconu, Mr. Eide, Mr. Sadi, Mr. Suscún and herself. The Working Group had considered the information received on issues falling under item 16, and in particular on the main theme of that year, the exploitation of child labour. Work had also continued in other areas of contemporary forms of slavery, such as the sale of children, child prostitution, practices of apartheid and colonialism, and so on. The Working Group had considered the replies and information received on the implementation of the slavery and related Conventions, and the question of an effective implementation mechanism. It had adopted a series of recommendations for the attention of the Sub-Commission on the question of debt bondage. On the issue of the use of child labour, it had adopted a programme of action to combat the sale of children, child prostitution and child pornography. She would revert to those activities in some detail.

110. The Working Group on Contemporary Forms of Slavery had adopted recommendations on the slave trade. With regard to the sale of children, it had received information concerning organ extraction for commercial purposes; if that were confirmed, the problem should be followed up attentively. The Working Group had considered the activities already carried out by WHO in that field, notably the guiding principles formulated for transplants; it would take up the question at its next session. As for international adoption, it sometimes had commercial aims. The Working Group had considered that aspect and had also examined communications on the sexual exploitation of children, sex-oriented tourism and child prostitution. In particular, it had studied the proliferation of AIDS resulting from child prostitution. Prevention of the traffic in persons and the exploitation of the prostitution of others would be the main theme of the next session. The Working Group had also considered the slavery-like practices of apartheid and colonialism and their repercussions on children. It had also considered the forcible recruitment of children and their involvement in armed conflict; in the following year that question would be a separate item on its agenda.

111. The Working Group had noted with satisfaction that the Commission had appointed a Special Rapporteur for a two-year period to study the question of the sale of children, child prostitution and child pornography. It would like to co-operate with the Special Rapporteur but, unfortunately, he had not been able to attend the current session, as had been hoped. To rectify the situation, it was desirable that the consultations between the Special Rapporteur and the Centre for Human Rights should coincide with the next annual session of the Working Group.

112. Commenting on the general recommendations of the Working Group, she emphasized that the Group called for effective action to eliminate the contemporary forms of slavery that persisted in various parts of the world. The end of the twentieth century should see the eradication of all forms of

slavery. More specifically, she drew attention to the recommendations to Governments in the report (E/CN.4/Sub.2/1990/44) that they should adopt more effective legislation and measures against debt bondage. For example, products such as carpets should bear a guarantee that they had not been produced by children. She recalled that a work programme had been adopted in respect of the sale of children, child prostitution and child pornography, to be transmitted to Governments and intergovernmental and non-governmental organizations by the Centre for Human Rights. The Secretary-General would summarize the answers; the summary would be useful to the Working Group for assessing the situation.

113. The Working Group had therefore adopted a programme of action in connection with its main theme for the year. The Sub-Commission should transmit that programme to the Commission, to enable the Commission in its turn to transmit it to Governments which would be invited to submit their comments. The exploitation of child labour concerned developed and developing countries alike, but it was a fact that its main cause was poverty. One should not, however, wait until poverty was overcome before eradicating that problem; urgent measures needed to be taken and integrated into development strategies. The programme of action already approved by the Sub-Commission in that regard gave priority to the eradication of the most odious practices that affected children, namely, pornography, the sale of children, the employment of children in dangerous occupations, debt bondage, etc. The measures should give priority to children under 10 years of age; the ultimate objective was the total eradication of child labour in conformity with the relevant international instruments. The programme of action set forth, in a detail which she would not repeat because of time constraints, activities oriented towards information, education, social action, development aid, the application of labour standards, the role of United Nations organs and specialized agencies and co-operation at the local, national and international levels.

114. As well as the draft resolution on the main theme, an omnibus draft was also submitted on the remaining issues. She thanked the members of the Working Group and the other participants. Some 15 States had been represented by observers, and the specialized agencies and NGOs had sent approximately 30 representatives. Attendance has been lower than that registered in the Working Group on Indigenous Populations, to be sure, but it was on the increase and it should be further encouraged.

115. Mrs. DAES congratulated the Chairman/Rapporteur of the Working Group on Contemporary Forms of Slavery, Mrs. Ksentini, and the members of the Working Group; she considered that the report (E/CN.4/Sub.2/1990/44) was very comprehensive. She had been particularly struck by the chapter on children in armed conflict. She considered the recruitment of children for such purposes to be a serious crime. She recalled that Mr. Boudhiba had already taken up the question in a study on child exploitation when he had been a member of the Sub-Commission. That study should be revived and amplified. Subsequently, there had been a proposal by the Quakers, who had contributed greatly to child protection. The question of a study on the recruitment of children should be examined very seriously at the next session.

116. Mr. RAIANI (International Organization for the Elimination of All Forms of Racial Discrimination) recalled that the Sub-Commission had taken up the question of slavery in all its forms in 1967. At the time, particular forms

of colonialism had recently been imposed on West Bank and Gaza Strip Palestinians. In May 1990, international opinion had been shocked by incidents in which Palestinian workers had been killed on the very territory of Israel, a State with an intrinsically racist ideology. Today, Israel held 90 per cent of the land which had formerly belonged to Palestinians within its own territory, and 60 per cent in the occupied territories. Consequently, Palestinians who had been deprived of their land were compelled to seek work by reporting to labour hiring-points, where they were treated exactly like slaves and assigned the most menial tasks - what was known as "Arab work".

117. Nelson Mandela had spoken of the common experience of South Africans and Palestinians who experienced a unique form of colonialism. In South Africa, a minority had seized 87 per cent of the land, on the basis of such laws as the Native Lands Act of 1913. Another feature in common was that the Afrikaners and Zionists invoked religious considerations. The Zionists quoted Psalm No. 105, which said that Israel would take the land of the "heathens" and inherit the labour of the people.

118. In Brazil, slavery had been officially abolished 102 years earlier, but there were still 600,000 slaves kept in enclosed areas, under the supervision of guards, and who were tortured or killed when they tried to escape. The Brazilian press had reported that well known industrialists and respected members of society were slave-owners. In the Dominican Republic, Haitians were bound by long-term contracts similar to slavery. The Head of State, President Balaguer had expounded a doctrine of white supremacy in a book, blaming the economic difficulties on persons of different origin.

119. He had just spoken of four different societies, all of which had, however, colonial origins. The colonial era was remote for two of them and still present for the other two; in all, the past profoundly influenced the present.

120. Mr. ILKAHANAF congratulated the Working Group on Contemporary Forms of Slavery on its excellent report. He noted the importance which the Working Group gave to children in armed conflict. He welcomed that recognition, since children and women suffered the most in armed conflicts, and he urged the Working Group to continue along those lines.

121. Mrs. BAUTISTA also congratulated the Working Group which had addressed a range of issues. Slavery-like practices persisted in many countries and renewed efforts needed to be made to eliminate their causes. Much of the Working Group's activity had been focused on children who were victims of a variety of slavery-like situations: the exploitation of child labour, debt bondage, the sale of children, child prostitution and children in armed conflict. She was gratified that a large number of countries and NGOs had supported the Working Group in its efforts; without that support, the Working Group would not have been able to draw on such a wealth of information and documentation. There was still much to be done and she urged the Working Group to continue its useful work.

122. Mr. EIDE, speaking as a member of the Working Group on Contemporary Forms of Slavery, said that he very much appreciated the support extended to it by the Sub-Commission and the Commission itself. At its preceding session, the Commission had approved the programme of action drawn up by the Working Group for submission to Governments as well as the proposal to appoint a special

rapporteur on the sale of children, child prostitution and child pornography. He was very grateful to Mrs. Ksentini for her work, and hoped that she would continue to be the Chairman of the Working Group the following year.

123. Mrs. KSENTINI, summing up, said that she very much appreciated the expressions of encouragement by the Sub-Commission and Commission, which gave an impetus to the Working Group's activities. She had also been gratified that the programme of action and the proposal to appoint a special rapporteur, mentioned by Mr. Eide, had been approved. Like Mrs. Bautista, she was keenly aware of the value of the support of government and NGO representatives and she hoped that it would increase further.

124. There had been few comments on the report (E/CN.4/Sub.2/1990/44); she therefore inferred that its conclusions were generally accepted. She assured Mrs. Daes that the study by Mr. Boudhiba was by no means consigned to oblivion; it had been one of the basic documents for the study of the main theme of the session, and one of the recommendations in the report concerned updating it. With regard to the suggestion by Mrs. Daes that there should be a study on the recruitment of children, she recalled that the Working Group had decided to assign a separate item to that question. The Working Group had also requested that guidelines should be drawn up for combating contemporary forms of slavery in a variety of areas; child soldiers could form one such area. Finally, she expressed thanks to the members of the Working Group, recalling that the results were the outcome of work in common.

125. The CHAIRMAN said that the Sub-Commission had thus concluded its consideration of agenda item 16.

126. Mr. Türk resumed the Chair.

STATEMENTS EQUIVALENT TO THE EXERCISE OF THE RIGHT OF REPLY

127. The CHAIRMAN invited government observers who so wished to make statements equivalent to the exercise of the right of reply.

128. Mr. PERCAYA (Observer for Indonesia), recalling references to his country made under agenda items 4 and 8, deplored the fact that certain individuals submitted complaints to the Sub-Commission which ought to have been dealt with under the national legal procedures. He recalled that the Universal Declaration and the Covenants specified that freedom of expression was subject to legal restrictions imposed inter alia by national security and public order. He went on to say that in a democratic society, freedom of expression must be exercised in accordance with the procedures approved by the majority. Moreover, the allegation of discrimination in the selection of candidates for the armed forces was unfounded. As for the complaint concerning land disputes, he noted that the speaker had appeared to be unaware of the land ownership system and systems of compensation existing in Indonesia. He had referred to a case of unlawful occupation of protected forests. In any event, an affair of that kind should be brought before a court, rather than the Sub-Commission.

129. Mrs. SINEGIORGIS (Observer for Ethiopia) rejected the allegations made by the International League for the Rights and the Liberation of Peoples against her Government and in particular against the autonomous region of Eritrea. Those allegations merely repeated the usual charges made by a secessionist group from that region and by forces hostile to Ethiopian unity. Her

delegation had already replied to the question in a statement on 25 August 1990. She recalled once again that the secessionists had shown themselves to be intransigent and had left the negotiating table, whereas the Ethiopian Government was continuing to try to resolve the situation by peaceful methods. Further, the secessionists had not agreed to invite the United Nations to attend the peace talks. During that time, they continued their attacks against population centres in the autonous region of Eritrea, using heavy artillary. For example, on 15 August 1990, they had killed 52 people and injured 109 others in the town of Asmara; 3,525 people had had to leave their homes as a result of the bombing. The NGO to which she was replying concealed the excesses committed by the secessionists and thus tried to abuse the Sub-Commission's objectivity.

130. Mrs. RADIC (Observer for Yugoslavia), responding to charges made concerning alleged repression in the autonomous region of Kosovo, stated, first of all, that the Yugoslav authorities had requested the Albanian-language press and television network to end their strike in order to be able to provide persons of Albanian origin with news in their mother tongue. Unfortunately, that politically motivated strike had been continued. The organizers of the strike were not dissidents, but militant separatists. Mr. Raiani had admitted that he had not been to Yugoslavia. She therefore wished to draw his attention to the fact that there was not just one Albanian-language newspaper, but dozens of dailies, weeklies and magazines. Further, United Nations organs were already fully informed about the situation of minorities in Yugoslavia and had received a considerable amount of information and statistics in that regard.

131. A statement made by Yugoslavia under agenda item 4 provided an answer to other charges made by the International Commission of Health Professionals for Health and Human Rights under item 13. She wished to add, however, that Mr. Graves was not a doctor, and that his organization did not enjoy observer status with WHO. Mr. Graves had made charges, stating that he had questioned 25 health professionals in Kosovo. He had asserted that incidents of poisoning that had occurred in that region could not be simulated; however, there was evidence to the contrary. At a meeting on the question held at the Palais des Nations, on 22 August, it had been stressed that selective incidents of poisoning, carried out on the basis of ethnic entity, were impossible.

132. Mr. MIRANDA (Observer for Cuba) said that certain allegations made in the Sub-Commission concerning the treatment of AIDS victims in Cuba had no basis in fact. In Cuba, AIDS victims were not detained, as had been claimed, but recieved medical treatment. The practice of isolating sick persons was a long established custom in Cuba, and it had been followed in order to prevent the proliferation of other diseases. If sick people were interned, it was to enable them to be treated by methods whose cost they would not otherwise be able to meet. In those conditions, the specialized care they received was free. They could be visited by their families. Moreover, Dr. Jonathon Mann had visited Cuba when he was the Director of the WHO Global Programme on AIDS in order to look into the AIDS prevention and anti-AIDS programme in Cuba, and he had then stated that the treatment was of high technical quality.

THE RIGHT OF EVERYONE TO LEAVE ANY COUNTRY, INCLUDING HIS OWN, AND TO RETURN TO HIS COUNTRY (agenda item 19) (E/CN.4/Sub.2/1990/47 and 48)

133. The CHAIRMAN said that Mr. Alfonso Martínez had indicated his willingness to introduce the report E/CN.4/Sub.2/1990/47, which was an analytical compilation of the comments on the draft declaration on freedom and non-discrimination in respect of the right of everyone to leave any country, including his own, and return to his country. He therefore thought it appropriate to give Mr. Alfonso Martínez an opportunity of introducing the report before the meeting ended.

134. Mr. ALFONSO MARTINEZ recalled that the previous year, the Sub-Commission had decided to set up an open-ended sessional working group to prepare a revised version of the aforementioned draft declaration. The Working Group, consisting of Mrs. Mbonu, Mr. Diaconu, Mr. Eide, Mr. Sadi, and himself, had held three informal working meetings which made it possible to finalize document E/CN.4/Sub.2/1990/47. The Working Group's discussions, summarized in the report E/CN.4/Sub.2/1990/47, had enabled progress to be made on only three articles in the draft declaration. For article 1, the Working Group proposed the following text: "Everyone has the right to leave any country, including one's own and to return to one's own country, without any discrimination as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, marriage, age or other status". The consideration of article 2 had been complicated by technical considerations; the Working Group had retained the text proposed in first reading, which appeared in paragraph 34 of the report. The text proposed by article 3 appeared in paragraph 40. The Working Group had begun to study article 4, which dealt with the brain drain, but had not had time to make progress on that extremely important question.

135. The Working Group made two recommendations to the Sub-Commission: first, at its forty-third session it should allocate more time to the Working Group; second, informal consultations should be held between the two sessions in order to expedite progress. At the current session it had been possible to form a better idea of the difficulties; more time and resources should be provided at the next session to enable the Working Group to resolve them.

136. The CHAIRMAN said that the Sub-Commission would continue its consideration of item 19 at its next meeting. Recalling that several references had been made to Canada in the course of that day's meetings, he assured the Sub-Commission that he remained in constant contact with the Permanent Representative of Canada to the United Nations Office at Geneva, and that the Sub-Commission would be informed in due course of developments in the situation. Moreover, the incident involving Mrs. Warzazi two days earlier was currently being studied by the Under-Secretary-General for Human Rights; the Sub-Commission would be informed of the action taken. Finally, he was gratified by the truly huge amount of work completed during the present meeting.

The meeting rose at 0.05 a.m.